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सं. 11] नई दिल्ली, मार्च 12—मार्च 18, 2017, शनिवार/ फाल्गुन 21—फाल्गुन 27, 1938  
No. 11] NEW DELHI, MARCH 12—MARCH 18, 2017, SATURDAY/ PHALGUNA 21—PHALGUNA 27, 1938

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके  
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)  
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों ( रक्षा मंत्रालय को छोड़कर ) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं  
Statutory Orders and Notifications Issued by the Ministries of the Government of India  
(Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 16 मार्च, 2017

का.आ. 694.—बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 53 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक की सिफारिश पर, एतद्वारा, यह घोषणा करती है कि बैंककारी विनियमन अधिनियम, 1949 की धारा 19 की उप-धारा (2) के उपबंध, आईसीआईसीआई बैंक लिमिटेड पर लागू नहीं होंगे, जहां तक इसका संबंध इंडिया इंफ्रास्ट्रक्चर लिमिटेड की चुकता पंजी के 30 प्रतिशत से अधिक राशि का शेयर धारण करने से है।

[फा.सं. 7/164/2011-बीओए]

शिवेन्द्र चतुर्वेदी, अवर सचिव

MINISTRY OF FINANCE  
(Department of Financial Services)

New Delhi, the 16th March, 2017

S.O. 694.—In exercise of the powers conferred by sub-section (1) of section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Central Government, on the recommendation of the Reserve Bank of India, hereby declare that

the provisions of sub-section (2) of section 19 of the Banking Regulation Act, 1949, shall not apply to the ICICI Bank Limited in so far as they relate to its holding shares of an amount exceeding thirty percent. of the paid-up capital of the India Infradebt Limited.

[F.No. 7/164/2011-BOA]

SHIVENDRA CHATURVEDI, Under Secy.

नई दिल्ली, 16 मार्च, 2017

**का.आ. 695.**— बैंककारी विनियमन अधिनियम, 1949 (1949 का 10) की धारा 53 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार, भारतीय रिजर्व बैंक की सिफारिश पर, एतद्वारा, यह घोषणा करती है कि बैंककारी विनियमन अधिनियम, 1949 की धारा 19 की उप-धारा (2) के उपबंध, बैंक आफ बड़ौदा पर लागू नहीं होंगे, जहां तक इसका संबंध इंडिया इंफ्राडेब्ट लिमिटेड की चुकता पूंजी के 30 प्रतिशत से अधिक राशि का शेयर धारण करने से है।

[फा.सं. 7/164/2011-बीओए]

शिवेन्द्र चतुर्वेदी, अवर सचिव

New Delhi, the 16th March, 2017

**S.O. 695.**— In exercise of the powers conferred by sub-section (1) of section 53 of the Banking Regulation Act, 1949 (10 of 1949), the Central Government, on the recommendation of the Reserve Bank of India, hereby declare that the provisions of sub-section (2) of section 19 of the Banking Regulation Act, 1949, shall not apply to the Bank of Baroda in so far as they relate to its holding shares of an amount exceeding thirty percent. of the paid-up capital of the India Infradebt Limited.

[F.No. 7/164/2011-BOA]

SHIVENDRA CHATURVEDI, Under Secy.

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 17 मार्च, 2017

**का.आ. 696.**—केन्द्र सरकार एतद्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, दिल्ली विशेष पुलिस स्थापना (सीबीआई) द्वारा संस्थापित मामलों का कर्नाटक उच्च न्यायालय की धारवाड स्थित पीठ तथा विशेष पुलिस स्थापना (सीबीआई) द्वारा जांच किए गए मामलों की अपील, पुनरीक्षण या उनसे उत्पन्न अन्य मामलों के अभियोजन का संचालन करने के लिए श्री एम.बी. कनावी, अधिवक्ता को उनके नियुक्ति की तिथि से तीन वर्ष या अगले आदेश तक, जो भी पहले हो, के लिए विशेष लोक अभियोजक के रूप में नियुक्ति करती है।

[फा. सं. 225/27/2016-एवीडी -II]

एस. पी. आर. त्रिपाठी, अवर सचिव

**MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS**

**(Department of Personnel and Training)**

New Delhi, the 17th March, 2017

**S.O. 696.**—In exercise of the powers conferred by sub-section (8) of section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri M.B. Kanavi, Advocate as Special Public Prosecutor for conducting the prosecution of cases instituted by Delhi Special Police Establishment (CBI) before the Karnataka High Court at Dharwad Bench and appeals, revisions or other matters arising out of the cases investigated by the Delhi Special Police Establishment (CBI) for a period of three years from the date of appointment or until further orders, whichever is earlier.

[F.No. 225/27/2016-AVD-II]

S. P. R. TRIPATHI, Under Secy.

नई दिल्ली, 17 मार्च, 2017

**का.आ. 697.**—केन्द्र सरकार एतद्द्वारा दंड प्रक्रिया संहिता, 1973 (1974 का अधिनियम सं. 2) की धारा 24 की उपधारा (8) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, दिल्ली विशेष पुलिस स्थापना (सीबीआई) द्वारा तेलंगाना राज्य और आन्ध्र प्रदेश राज्य हेतु संस्थापित मामलों का हैदराबाद उच्च न्यायालय तथा विशेष पुलिस स्थापना (सीबीआई) द्वारा जांच किए गए मामलों की अपील, पुनरीक्षण या उनसे उत्पन्न अन्य मामलों के अभियोजन का संचालन करने के लिए श्री के. सुरेन्द्र, अधिवक्ता को उनके नियुक्ति की तिथि से तीन वर्ष या अगले आदेश तक, जो भी पहले हो, के लिए विशेष लोक अभियोजक के रूप में नियुक्ति करती है।

[फा. सं. 225/27/2016—एवीडी—II]

एस. पी. आर. त्रिपाठी, अवर सचिव

New Delhi, the 17th March, 2017

**S.O. 697.**—In exercise of the powers conferred by sub-section (8) of section 24 of the Code of Criminal Procedure, 1973 (Act No. 2 of 1974), the Central Government hereby appoints Shri K. Surender, Advocate as Special Public Prosecutor for conducting the prosecution of cases instituted by Delhi Special Police Establishment (CBI) before the Hyderabad High Court for the State of Telangana and the State of Andhra Pradesh and appeals, revisions or other matters arising out of the cases investigated by the Delhi Special Police Establishment (CBI) for a period of three years from the date of appointment or until further orders, whichever is earlier.

[F.No. 225/27/2016-AVD-II]

S. P. R. TRIPATHI, Under Secy.

नागर विमानन मंत्रालय

नई दिल्ली, 9 मार्च, 2017

**का.आ. 898.**—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उपनियम (4) के अनुसरण में, नागर विमानन मंत्रालय के संबद्ध कार्यालय नागर विमानन महानिदेशालय के उप क्षेत्रीय कार्यालय, उप निदेशक, उड़नयोग्यता का कार्यालय, भोपाल को उनके 80 प्रतिशत से अधिक कर्मचारियों द्वारा हिंदी का कार्यसाधक ज्ञान प्राप्त कर लेने पर एतद्द्वारा अधिसूचित करती है।

[सं. ई-11014/9/2015-रा.भा.]

अनिल श्रीवास्तव, संयुक्त सचिव

**MINISTRY OF CIVIL AVIATION**

New Delhi, the 9th March, 2017

**S.O. 698.**—In pursuance of Sub-rule (4) of Rule 10 of the Official Languages (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the Directorate General of Civil Aviation's Sub-regional Office, Deputy Director, Office of Airworthiness, Bhopal, an attached office of Ministry of Civil Aviation, whereof, more than 80% staff have acquired the working knowledge of Hindi.

[No. E-11014/9/2015-OL]

ANIL SRIVASTVA, Jt. Secy.

**श्रम एवं रोजगार मंत्रालय**

नई दिल्ली, 6 मार्च, 2017

**का.आ. 699.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार क्षेत्रीय निदेशक, इंदिरा गांधी राष्ट्रीय मुक्त विश्वविद्यालय और उनकी कर्मकार, के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 38/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.12.2016 को प्राप्त हुआ था।

[सं. एल-42012/176/2015-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

**MINISTRY OF LABOUR AND EMPLOYMENT**

New Delhi, the 6th March, 2017

**S.O. 699.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 38/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in Annexure, in the industrial dispute between the employers in relation to the The Regional Director, Indira Gandhi National Open University and their workman, which was received by the Central Government on 08.12.2016.

[No. L-42012/176/2015-IR (DU)]

RAJENDER JOSHI, Dy. Director

**ANNEXURE****CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR****Present :**

Shri B.C. Rath,  
Presiding Officer, C.G.I.T.-cum-Labour  
Court, Bhubaneswar.

**INDUSTRIAL DISPUTE CASE NO. 38/2015**

No. L-42012/176/2015-IR(DU), dated 02.11.2015

**Date of Passing Order – 3<sup>rd</sup> November, 2016****Between :**

1. The Director,  
M/s. G.A. Digital Web Word,  
Plot No. 1, Hargovind Enclave,  
Vikas Marg Extn., New Delhi – 110 092.
2. The Regional Director,  
Indira Gandhi National Open University,  
Bhubaneswar Regional Centre,  
C-1, Institutional Area,  
Bhubaneswar (Orissa) – 751 016

...1<sup>st</sup> Party-Managements**(And)**

Shri Bismita Ranjan Parida,  
Maruti Villa, Phase-II, Plot No. S-84,  
Patia, Bhubaneswar (Orissa) – 751 001

...2<sup>nd</sup> Party-Workman**Appearances :**

- None ... For the 1<sup>st</sup> Party-Managements  
None ... For the 2<sup>nd</sup> Party-Union

**ORDER**

Case taken up. Parties are absent. The 2<sup>nd</sup> Party-Union has not filed any statement of claim despite sending notices through ordinary as well as regd. post. In order to give a last opportunity to the 2<sup>nd</sup> party-Union notice was issued on 29.07.2016 fixing 15.09.2016 for appearance and for filing of statement of claim, but neither the 2<sup>nd</sup> party-Union caused appearance nor has filed any statement of claim. In order to give a last chance/opportunity to the 2<sup>nd</sup> party-Union the case was posted to 03.11.2016 for filing of statement of claim, but the 2<sup>nd</sup> party-Union did not respond and file the statement of claim. As such it seems that the 2<sup>nd</sup> party-Union is not interested in prosecuting its case. However the dispute cannot be adjudicated upon for want of pleadings on behalf of the parties. As such there is no other alternative except to return the reference to the Government for necessary action at its end.

2. Accordingly the reference is returned to the Government of India, Ministry of Labour unanswered for necessary action at its end.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 6 मार्च, 2017

**का.आ. 700.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक, सेंट्रल इंस्टीट्यूट ऑफ फ्रेश वाटर एक्वाकल्चर और उनकी कर्मकार, के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 43/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.12.2016 को प्राप्त हुआ था।

[सं. एल-42025/03/2017-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th March, 2017

**S.O. 700.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 43/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the employers in relation to the The Director, Central Institute of Fresh Water Aquaculture (CIFA) and their workman, which was received by the Central Government on 08.12.2016.

[No. L-42025/03/2017-IR (DU)]

RAJENDER JOSHI, Dy. Director

**ANNEXURE****CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR****Present :**

Shri B.C. Rath,  
Presiding Officer, C.G.I.T.-cum-Labour  
Court, Bhubaneswar.

**INDUSTRIAL DISPUTE CASE NO. 43/2011**

**Date of Passing Order – 4<sup>th</sup> November, 2016**

**Between :**

The Director, Central Institute of Fresh  
Water Aquaculture (CIFA), Kausalyaganga,  
Bhubaneswar – 02

...1<sup>st</sup> Party-Management

**(And)**

The General Secretary, CIFA Shramik Sangh,  
At. CIFA, Kausalyaganga, Bhubaneswar-02

...2<sup>nd</sup> Party-Union.

**Appearances:**

Shri Indramni Muduli, Asst. Admn. Officer

... For the 1<sup>st</sup> Party-Management

Shri Debendra Nath Mallik

... For the 2<sup>nd</sup> Party-Union

### AWARD

The common award arises out of an application preferred directly in this Tribunal by CIFA Shramik Sangha represented through its General Secretary under section 2-A(2) of the Act, 1947 (hereinafter referred to as Act) and out of a reference as made by the Government of India, Ministry of Labour in exercise of powers conferred in clause (d) of Sub-section 2-A of Section 10 of the following schedule :-

“Whether the action of the management of the Director, Central Institute of Fresh Water Aquaculture, Bhubaneswar, in not paying the attention to the 7 point charter of demands (copy enclosed) raised by the CIFA Shramik Sangh in the entire decision making process is legal and justified? What relief the concerned Shramik Sangh is entitled to”?

2. The case of the applicants-2<sup>nd</sup> party-Union, as revealed from its statement of claim filed in the above noted cases, is that CIFA Shramik Sangha is a registered trade Union and functioning for welfare of individual workers employed in the establishment of the 1<sup>st</sup> Party-Management. The 1<sup>st</sup> Party-Management, CIFA is an organization under ICAR, under the Ministry of Agriculture, Government of India functioning at Kausalyagang at Bhubaneswar and the said institution was established with an objective of development of pisciculture and similar related firms like prawn, pearl, fish diary firm and agriculture sector with financial assistance of Government of India. The organization takes the help of manual works in its day to day work carried out in its farms and scientific research centers. 169 workers are stated to have been giving manual service in the firming and research centers of the 1<sup>st</sup> party-Management for more than 15 to 20 years continuously and they are engaged for more than 240 days continuously in each calendar year. The nature of their job is different and the same is perennial. In spite of their engagement for a considerable period and they are discharging of duties with all sincerity and devotion for the last 15 to 20 years, no effort has been taken by the Management for regularization of their services or to cover them in the Scheme of 1/30<sup>th</sup> of wages of the Central Government. Hence, the 2<sup>nd</sup> party-Union raised a dispute before the labour machinery demanding regularization of the service of those 169 workers or in alternate to extend the benefit of temporary status to them as contemplated under the Scheme of 1/30<sup>th</sup> of wages of the Central Government. The Management did not participate in the conciliation proceeding initiated before the labour machinery taking a stand that the workers being casual labourers and engaged intermittently whenever their service is necessary cannot be covered by the provisions of the I.D. Act. When the labour machinery fails to take timely steps in adjudicating the dispute raised by the 2<sup>nd</sup> party-Union in spite of a lapse of 45 days from the date of raising the dispute before the labour machinery, a claim petition is filed directly by the Secretary of the Union resorting to the provision of Section 2-A(2) of the Act. While the said application was pending for disposal being registered in I.D. Case No. 43/2011, on receipt of the reference as stated in supra I.D. Case No. 41/2012 has been registered for adjudication of the dispute raised before the labour machinery. Since the subject matter of both the disputes are identical order was passed for analogous hearing of both the cases. The genesis of the dispute is for implementation of 7 Point Charter of Demands put forth by the 2<sup>nd</sup> party-Union which are as follows:-

1. All the casual workmen working under CIFA should receive their wages directly from CIFA like payment made to them prior to July, 2001.
2. That all the workmen have been working more than 240 days in each calendar year and eligible to receive 1/30<sup>th</sup> wages. Hence, payment to be made accordingly.
3. That, the work of all the above workmen are permanent and perennial in nature. Hence, their services should be made regular without any further delay.
4. That all the above workmen are eligible to receive bonus, Hence bonus to be paid to them immediately.
5. That the medical facilities to be extended to all the casual workmen as a social responsibility of the employer.
6. Safety equipment Uniform, Boots etc. to be provided to all the above workmen.
7. That the workmen who are eligible to be promoted to T.S. category should be given at an early date.

3. Being noticed the 1<sup>st</sup> Party-Management made its appearance and filed a common written statement in both the cases challenging the maintainability of the cases as well as denying the claim of the 2<sup>nd</sup> party-Union. A stand has also been taken that the Management not being an Industry is not coming under the purview of the I.D. Act. It is its stand that some labourers are engaged locally for various miscellaneous jobs as and when required and their engagement was in sponsored projects. By efflux of the said projects they are allowed to work in other projects, if available and likewise they have been engaged intermittently to work in different projects. It has also been pleaded that some casual workers are working directly under the Management and getting their wages and other financial benefits as per guidelines of Government of India whereas rest are working as contract labourers being engaged through labour supply contractors. Both the groups of labourers are different categories and they cannot be covered by temporary status scheme on account of they being employed casually/temporarily on the need basis.

4. Since they have been employed for temporarily on daily wage basis to carry out certain work for certain hours in specific projects, they have no right to claim for their permanent absorption or regularization of their services. Further, having been engaged through labour contractors there is no relationship of “employer and employee” between the workmen and the Management and as such, no relief can be extended to the workmen-Union. It has also been pleaded that the matter was taken for consideration earlier in this Tribunal in the event of a reference made by the Government of India, Ministry of Labour vide I.D. Case No. 22/2000 and the claim was rejected. The Union had preferred a Writ Appeal against such order of this Tribunal and the same having been dismissed the present reference has no merit for adjudication. Hence, prayer has been made for dismissal of the application.

5. On the aforesaid pleadings of the parties following issues have been settled.

#### ISSUES

1. Whether the cases are maintainable?
  2. Whether the action of the Management of CIFA in changing the service condition of 111 numbers of casual workers through signing a minutes with an unregistered trade union in the year 2001 is legal and/or justified?
  3. Whether the present 111 numbers of contract workers are doing same and similar nature of job like their counter part casual and regular employees of CIFA are eligible to receive direct payment from the principal employer?
  4. Whether the present 111 numbers of contract workmen are eligible to receive 1/30<sup>th</sup> wages like their counter part casual workmen from the date their counter part casual workmen are receiving?
  5. What relief the workmen are entitled to?
6. The 2<sup>nd</sup> party-Union has examined two witnesses namely Shri Debendranath Mallik and Shri Dhaneswar Behera and filed the xerox copy of Office Order No. 35/CIFA/Estbb./2007-4488(3) dated 27.12.2007 of A.O., CIFA, xerox copy of letter dated 11.11.2003 of A.P.F. communication, xerox copy of letter No. CIFA/Labour/2012, dated 28.3.2012 of Director to D.G., New Delhi, xerox copy of cadre strength of CIFA from 1.1.1995 to 2010 and xerox copy of charter demands dated 6.1.2011 of the Union in support of their claim whereas, the Management declined to adduce any evidence.

#### FINDINGS

##### ISSUE NO. 1

7. As the Management has challenged the maintainability of the case in I.D. Case No. 43/2011 on various reasons including the reason that the Tribunal has no jurisdiction to entertain dispute of the Union directly under Section 2-A(2) of the I.D. Act unless the same dispute being referred by the appropriate government in exercising of its authority under sub-section 2 of Section 10 of the I.D. Act. It is also contended on behalf of the Management that the demands raised in the Seven Point Charter of Demand have already been adjudicated by this Tribunal in an earlier reference in I.D. Case No. 20/2000 the present I.D. Case No. 43/2011, which has been ordered to be heard analogously with I.D. Case No. 41/2012, is also not maintainable on the principle of resjudicata.

8. Undoubtedly Case No. 43/2011 has been registered in the event of 2<sup>nd</sup> party-Union presenting an application directly before the Tribunal resorting to the provisions of Section 2-A(2) of the Act. Such an application has been filed on a contention that the matter was raised in a shape of dispute before the labour machinery and as no action was taken by the conciliation officer within 45 days of raising the dispute, the 2<sup>nd</sup> party-Union is forced to file the present application under the above provisions of the Act. But, Section 2-A provides as follows:-

2-A. **Dismissal, etc., of an individual workman to be deemed to be an industrial dispute** – (1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any Union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in Section 10, any such workman as in specified in sub-section(1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all

the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

- (3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).

9. On a mere reading of the above provisions it is crystal clear that an Industrial Dispute can be agitated directly before the Tribunal by an individual workman only in a matter of dispute relating to his illegal discharge, dismissal, retrenchment or termination of service and otherwise and such dispute can be raised by filing an application directly before the Labour Court and the Tribunal for its adjudication after expiry of 45 days from the date of application to the conciliation officer of the appropriate Government for conciliation of the dispute and then only the Tribunal and the Labour Court have power and jurisdiction to adjudicate upon the dispute as if the same is referred to it by the appropriate Government in accordance with the provisions of the I.D. Act provided such application is filed within three years from the date of such alleged discharge, dismissal, retrenchment or otherwise termination of service. Be that as it may, there is no scope for a workman or an Union to make an application directly to the Labour Court or Tribunal for raising a dispute involving other issues than the dismissal/termination/retrenchment of a workman. Admittedly, the 2<sup>nd</sup> party-Union has preferred the present application in I.D. Case No. 43/2011 on seven points charter of demands including the demand for regularization of services of 169 workmen or in alteration implementation of 1/30<sup>th</sup> Wage Scheme for those workers. The application does not reveal that any of the disputant workmen is facing termination, dismissal or disengagement. Hence, the application preferred in I.D. Case No. 43/2011 is not maintainable and the dispute raised therein cannot be taken into consideration in this adjudication process in view of provisions made in Section 2-A(2) of the Act. Thus, it can be safely said that I.D. Case No. 43/2011 is not maintainable.

10. Coming to the maintainability of the I.D. Case No. 41/2012 registered in the event of receipt of a reference made by the Government of India, Ministry of Labour in exercising its authority under sub-section 2-A of Section 10 of the I.D. Act the stand of the 1<sup>st</sup> Party-Management is that the dispute having been adjudicated earlier by this Tribunal vide I.D. Case No. 20/2000 the reference is not maintainable. On a close reading of the photocopy of the award pronounced in the case of 20/2000, the schedule of the reference and pleadings advanced by the 2<sup>nd</sup> party-Union in its statement of claim it is found that in the earlier reference regularization of service of the casual workers/daily wagers engaged in the establishment of the 1<sup>st</sup> Party-Management was the subject matter of the dispute and the award does not reveal that issue of whether the Scheme of 1/30<sup>th</sup> wage is applicable to the disputant workmen was not taken into consideration while adjudicating the said reference. Besides, certain other demands relating to service conditions of the disputant workmen have been raised in the present reference and those demands were not taken for adjudication in the earlier reference. Therefore, the contentions raised by the Management regarding maintainability of the reference on the principle of *resjudicata* does not seem to have any merit.

11. The Management has also challenged the maintainability of the reference contending that the organization of the Management is not covered by the definition of "Industry" as contemplated under section 2(j) of the Act and the workers being contract labourer and engaged temporarily and intermittently on need basis there is no relationship of "employer and employee" between the parties and those workers are not coming under the purview of the "workman" of the 1<sup>st</sup> Party-Management as defined under section 2(s) of the Act.

12. The Management has filed the copies of the award of this Tribunal in the case of 20/2000 and copy of the judgement of the Hon'ble High Court in W.P(C) No. 12054. Perusal of these orders clearly suggest that the Management had not taken any such stand or raised any such contention either in the Tribunal or in the Hon'ble High Court. Besides, if the principle enunciated by the Hon'ble Apex Court in the case of Bangalore Sewerage Board – Versus – A Rajappa & Others reported in AIR 1978 SC 969 are taken into consideration, the 1<sup>st</sup> Party-Management cannot be excluded from the definition of "Industry" as products or procurements from the research centers or its firms are being sold to the public. Further, the Management admits engagement of the workers in the firms or its research centers. As per the I.D. Act there is no separate distinction in the definition of "workman" for distinguishing such workmen having temporary status or permanent status whose cause would be protected under the I.D. Act. Whether the disputant workmen are contract labourer or they are working directly under the Management is to be looked into in the present adjudication. In the above back-drops the contentions raised by the Management on the maintainability of the reference has no force and as such, the issue is answered in favour of the Management.

13. Since other issues are inter-related to each other they are taken up together for the sake of convenience. It is seen from the pleadings and evidence advanced by the 2<sup>nd</sup> party-Union that disputes raised in Seven Point Charter of Demands is nothing more or less than the facilities extended to a temporary status workman covered by 1/30<sup>th</sup> wage scheme and regularization of their service. It is the main plank of the Management that the scheme is not applicable to the contract labourers and since the disputant workmen are being engaged through labour contractors and their engagement/employment is seasonal and intermittent and they are not being engaged continuously for 240 days in a



year or 206 days in a year where five day office being held in a week, they have no right to claim benefit under 1/30<sup>th</sup> Wages Scheme.

14. In view of the stand taken by the Management and the settled principles enunciated by the Hon'ble Apex Court that initial burden lies on the workman to establish that he worked 240 days continuously in a year in order to avail any benefit extended under the Industrial Disputes Act. The 2<sup>nd</sup> party-Union is required to establish the relationship of "employer and employee" as well as engagement of 169 disputant workmen for continuous 240 days work in a year by credible and unimpeachable evidence. In this regard except oral assertions by two witnesses not a single scrap of paper has been filed to show that the workmen were paid directly by the Management towards their wages, any letter towards their engagement or any document by which they were approached to work as a casual/temporary labourer directly in the various centers of the Management. As per the pleadings of the Union the disputant workmen are employed in field work in various farms and research centers. It cannot be over-sighted that manual work in the farms or research centers is usually seasonal in nature and as such, the contention advanced by the Management cannot be lightly brushed aside. When the Union fails to file any document to show the engagement of the workmen, mode of payment and amount of wages received by each workmen in a year, a mere bald statement by the workman witnesses cannot be sufficient to hold that the disputant workmen are being engaged directly and working continuously for 240 days in a year in the establishment of the Management. Undisputedly the workmen are claimed to have been engaged temporarily/casually and as such they are not expected to be provided with any appointment/engagement letter or wage slip. However, a muster roll and wage register are expected to be maintained in the establishment of the Management from which the term and mode of employment as well as period of employment of disputant workmen can be ascertained. Having required to prove their engagement the workmen could have called up the Management to produce those muster roll and wage register to prove that they were not contract labourers and they were engaged and working directly in the establishment of the Management. On a close scrutiny of the documents filed by the workmen it is seen that it does not disclose that any of the disputant workmen are working continuously in the establishment of the Management or their engagement was not through contract labourer. The list of the disputant workmen furnished by the 2<sup>nd</sup> party-Union does not seem to have been issued by the office of the Management.

15. That apart, if the list furnished during the examination of workmen witnesses is accepted for argument sake, the engagement of the disputant workmen appears to be after the year 1994. The DoPT formulated the Scheme of temporary status with certain features and the Scheme came into force with effect from 1.9.1993. Clause 4(1) of the Scheme reads as follows:-

"Temporary status"(1) "temporary" status would be conferred on all casual labourers who are in employment on the date of issue of this O.M. and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days "week").

16. From which it is clear that the conformant of temporary status is to be given to the casual labourers who were in employment as on the date of commencement of the Scheme. The Scheme does not envisage that it is an on-going Scheme. In order to acquire temporary status the casual labourer should have been in employment as on the date of commencement of the Scheme and he should have rendered a continuous service for at least one year which means he should have been engaged for a period of at least 240 days in a year or 206 days in a case of offices observing five days in a week. This view has been taken by the Hon'ble Apex Court in the case of Union of India –Versus- Gagan passed in Civil Appeal 1026/2003 and in the case of Union of India and Another –Versus Mohan Pal etc. etc. passed in Civil Appeal 3168/2002. Neither the pleadings nor the evidence of the 2<sup>nd</sup> party-Union is specific that any of the disputant workmen was under employment of the Management when the Scheme was introduced. On the other hand it is emerging from the oral as well as documentary evidence of the 2<sup>nd</sup> party-Union that 29 casual workers have been conferred with temporary status. It is not out of place to mention here that some office orders relating to conformant of temporary status to different workmen/casual labourer working in different organizations of Central Government have been filed by the 2<sup>nd</sup> party-Union in support of the dispute raised by the Union. But, the copies of the orders are no way helpful to determine the cause of the 2<sup>nd</sup> party-Union as the same do not disclose whether the casual labourers named in the order were eligible or not ineligible for conformant of such temporary status in view of the provisions enumerated in the Scheme. On the other hand no claim has been made that any of the disputant workmen though being engaged prior to the commencement of the Scheme has been left-out being treated as temporary status workmen.

17. Further, it is pertinent to mention here that a demand has been raised for implementation of 1/30<sup>th</sup> Wage Scheme to the disputant workmen. But the 2<sup>nd</sup> party-Union has not filed a copy of the Scheme for perusal of the Tribunal to determine whether any of the disputant workmen or contract labourer can be covered by the Scheme. No evidence either in shape of oral or documentary has been led to show that the disputant workmen are eligible to be covered by the Scheme and as such the demands raised under seven point charter of demand should be extended to them. Regard being had to the discussions made above the claim statement submitted by the 2<sup>nd</sup> Party-Union does not seem to have any merit.

18. On the other hand, there is no serious dispute to the fact that this Tribunal vide its I.D. Case No. 20/2000 adjudicated a dispute raised by the 2<sup>nd</sup> party-Union wherein claim was raised for regularization of service of temporary workers numbering 50 and the adjudication went against the Union. A Writ Appeal was also preferred before the Hon'ble High Court against the Award of this Tribunal passed in above I.D. Case. The said Writ was also disposed of confirming the term of the Award passed by this Tribunal with a direction that the Management may frame an appropriate Scheme and consider the case of the concerned workmen for absorption or regularization keeping in view their previous experience in work and the fact that they have been working under the Management since long. Be that as it may the Management may frame appropriate scheme and consider the case of the concerned workmen for absorption/regularization pursuant to the observations of the Hon'ble High Court in the above Writ. That apart, the Management is to consider to extend benefits, if any under the Scheme of Temporary Status or 1/30<sup>th</sup> Wage to the disputant workmen if they are found to be eligible to avail of such benefits under the said Scheme.

19. Reference is answered accordingly.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 6 मार्च, 2017

**का.आ. 701.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक, भारत संचार निगम लिमिटेड और उनकी कर्मकार के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर के पंचाट (संदर्भ संख्या 43/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.02.2017 को प्राप्त हुआ था।

[सं. एल-40012/123/2005-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th March, 2017

**S.O. 701.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 43/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Jaipur as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, Bharat Sanchar Nigam Limited and their workman, which was received by the Central Government on 28.02.2017.

[No. L-40012/123/2005-IR (DU)]

RAJENDER JOSHI, Dy. Director

अनुबंध

केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जयपुर

सी.जी.आई.टी. प्रकरण सं. 43 / 2006

भरत पाण्डेय, पीटासीन अधिकारी

रेफरेन्स नं. L- 40012/123/2005-IR(DU) दिनांक 6/06/2006

Shri Damodar S/o. Shri Girdhari Singh Rajput,  
R/o Village Dabri, Post Sadsiner  
Teh. Fatehpur, Shekhawati  
Sikar Bikaner (Rajasthan)

V/s

1. The General Manager,  
Office of the General Manager Telecom District,  
Bharat Sanchar Nigam Ltd.,  
Bikaner- Rajasthan
2. Deputy Divisional Engineer, B.S.N.L.,  
Shri Dungargarh, Bikaner, Rajasthan

प्रार्थी की तरफ से : श्री सी.एल.सैनी – एडवोकेट

अप्रार्थी की तरफ से : श्री सुरेन्द्र सिंह – एडवोकेट

: पंचाट :

दिनांक : 21.1.2017

1. केन्द्रीय सरकार द्वारा औद्योगिक विवाद अधिनियम 1947 की धारा 10 उपधारा 1 खण्ड (घ) के अन्तर्गत दिनांक 6.6.2006 के आदेश से प्रेषित विवाद के आधार पर यह प्रकरण न्यायनिर्णयन हेतु संस्थित है। केन्द्रीय सरकार द्वारा प्रेषित विवाद निम्नवत् है :-

“Whether the action of the management of Bharat Sanchar Nigam Ltd. Bikaner through General Manager in terminating the Services of claimant Shri Damodar S/o. Shri Girdhari Singh, Lineman w.e.f. 24-9-03 is legal and justified? If not, what relief the claimant is entitled to and from which date?”

2. स्टेटमेन्ट ऑफ क्लेम में दिये गये तथ्यों के अनुसार संक्षिप्ततः प्रार्थी का कथन है कि प्रार्थी श्रमिक ने अप्रार्थी संख्या 2 उपमण्डल अभियन्ता श्रीडूगरगढ बीकानेर के मौखिक आदेश दिनांक 3.5.2001 से लाइनमेन के पद का कार्य सूडसर, दूरभाष केन्द्र के अधीन किया। प्रार्थी श्रमिक ने सेवा के दौरान टेलीफोन ठीक करने, नए कनेक्शन लगाने, केबिन जोइंटिंग करने तथा एक्सचेंज व लाइनों के रखरखाव एवं मरम्मत का कार्य किया। सेवा के दौरान प्रार्थी श्रमिक को उक्त कार्य के बदले 60 रुपये प्रतिदिन के हिसाब से मजदूरी दी जाती थी तथा 200 रुपये मासिक मकान किराया भी अप्रार्थीगण के द्वारा प्रार्थी श्रमिक को समय-समय पर भुगतान किया गया।

3. प्रार्थी श्रमिक की सेवाएं संतोषप्रद थी। प्रार्थी श्रमिक की सेवाओं के सम्बन्ध में किसी प्रकार की कोई प्रतिकूल प्रविष्टि या अप्रार्थीगण को कोई शिकायत नहीं रही है।

4. प्रार्थी को दिनांक 24.9.2003 को अचानक मौखिक आदेश से सेवापृथक कर दिया गया। सेवापृथक आदेश देने से पूर्व प्रार्थी श्रमिक को न तो एक माह का नोटिस दिया गया और न ही नोटिस अवधि के वेतन का भुगतान किया गया। यहां यह स्पष्ट किया जा रहा है कि जो कार्य अप्रार्थीगण/नियोजक द्वारा श्रमिक प्रार्थी से लिया जाता था वह स्थाई प्रकृति का था तथा वह कार्य वर्तमान में भी बना हुआ है तथापि अप्रार्थीगण ने गैर कानूनी रूप से प्रार्थी श्रमिक को मौखिक आदेश दिनांक 24.9.2003 द्वारा सेवासे पृथक कर दिया।

5. प्रार्थी श्रमिक ने अप्रार्थीगण नियोजक के यहां लगातार 240 दिन तक कार्य किया है। अप्रार्थीगण ने प्रार्थी श्रमिक को मौखिकतः सेवा पृथक करने से पूर्व धारा 25-एफ औद्योगिक विवाद अधिनियम 1947 की पालना नहीं की है, अतः मौखिक सेवा पृथक आदेश दिनांक 24.9.03 गैर कानूनी है।

6. प्रार्थी की सेवा अप्रार्थी नियोजकगण ने अपने मौखिक आदेश दिनांक 24.9.2003 को बाद दोपहर बतौर छंटनी के समाप्त कर दी तथा ऐसा करने से पूर्व प्रार्थी जैसे कार्यरत कर्मकारों की कोई वरीयता सूची अप्रार्थी/नियोजकगण द्वारा जारी नहीं की गई। अप्रार्थी संस्थान में प्रार्थी जैसे करीब 300 से अधिक कर्मकार कार्यरत रहे हैं। अप्रार्थी संस्थान में प्रार्थी के पद का कार्य एवं पद रिक्त होते हुए भी अप्रार्थी नियोजक द्वारा प्रार्थी को उसकी सेवा अवधि के अनुरूप नियमित सेवा का लाभ नहीं दिया गया है तथा बदनीयति से प्रार्थी की सेवा अवैध व अनुचित तथा गैर कानूनी रूप से समाप्त की गई है।

7. प्रार्थी को सेवापृथक करने से पूर्व अप्रार्थीगण द्वारा औद्योगिक विवाद अधिनियम की धारा 25 एफ एवं एच के तहत निर्धारित वेतन अथवा नोटिस वेतन तथा छंटनी मुआवजा राशि का भुगतान भी नहीं किया गया तथा न ही प्रार्थी को सेवासे पृथक करने से पूर्व वरिष्ठता सूची प्रकाशित की।

8. प्रार्थी, अप्रार्थीगण द्वारा सेवापृथक किए जाने के पश्चात हमेशा नियोजन हेतु तत्पर रहा परन्तु अप्रार्थीगण ने उसे नियोजन में वापस नहीं रखा और प्रार्थी को नियोजन के लिए नियोजित किए गए कर्मकारों से पहले आहूत नहीं किया, इस प्रकार अप्रार्थीगण द्वारा औद्योगिक विवाद अधिनियम की धारा 25 एच का भी उल्लंघन किया गया है।

9. अप्रार्थीगण द्वारा प्रार्थी के पद का कार्य एवं पद होते हुए भी प्रार्थी को अवैधानिक रूप से सेवापृथक किया है। प्रार्थी की सेवा अप्रार्थीगण द्वारा औद्योगिक विवाद अधिनियम की पांचवी अनुसूची के तहत श्रमिक विरोधी नीति को अपनाते हुए समाप्त की गई है। प्रार्थी ने अप्रार्थीगण से पुनः सेवा में लेने का बार-बार अनुरोध किया परन्तु विपक्षी द्वारा मात्र आश्वासन ही दिया गया पुनः सेवा में लेने का बार बार अनुरोध किया गया परन्तु विपक्षी द्वारा मात्र आश्वासन ही दिया गया एवं पुनः सेवा में नहीं लिया गया। बाद में विपक्षी द्वारा सेवा में पुनः लेने से स्पष्टतः इन्कार करने पर यह विवाद उत्पन्न हुआ।
10. प्रार्थी/श्रमिक अपने परिवार में इकलौता कमाने वाला है जिसे पुनः सेवा में नहीं लेने पर उसे व उसके परिवार को काफी आर्थिक कठिनाइयों का सामना करना पड रहा है।
11. प्रार्थी श्रमिक ने उपरोक्त सेवापृथक आदेश दिनांक 24.9.2003 से व्यथित होकर एक समझौता प्रार्थना पत्र समक्ष क्षेत्रीय श्रम आयुक्त केन्द्रीय, जयपुर के प्रस्तुत किया परन्तु समझौता अधिकारी ने असफल वार्ता प्रतिवेदन केन्द्र सरकार श्रम विभाग को प्रस्तुत कर दिया जिस पर यह रेफरेंस केन्द्र सरकार द्वारा माननीय न्यायालय को न्यायनिर्णयन हेतु भेजा गया है।
12. अन्त में प्रार्थना की गयी है कि प्रार्थी की क्लेम स्टेटमेन्ट को स्वीकार कर प्रार्थी को अप्रार्थीगण की सेवा पुनः नियुक्त करने का आदेश प्रदान करें तथा सेवापृथक की दिनांक से प्रार्थी श्रमिक को विपक्षी की सेवा में निरन्तर मानते हुए सेवा के समस्त लाभों सहित प्रार्थी श्रमिक को सेवा में बहाल करने का आदेश प्रदान करें तथा समस्त देय परिलाभ जो प्रार्थी अप्रार्थीगण के नियोजन में रहते हुए प्राप्त करता, प्रार्थी श्रमिक को विपक्षी से प्रदान कराए जावें तथा सेवापृथक आदेश दिनांक 24.9.2003 को अपास्त एवं निरस्त करने का आदेश प्रदान करने की कृपा करें।
13. विपक्ष की तरफ से वादोत्तर प्रस्तुत कर स्टेटमेन्ट ऑफ क्लेम के मद संख्या 1 को स्वीकार किया गया है और कहा गया है कि विपक्षी द्वारा प्रार्थी को न तो सेवा में रखा गया और ना ही सेवा से हटाया गया था।
14. प्रार्थी ने प्रस्तुत स्टेटमेन्ट ऑफ क्लेम का मद सं 2 जिस प्रकार प्रस्तुत किया है स्वीकार नहीं है। यह गलत है कि प्रार्थी ने दिनांक 3.5.2001 को अप्रार्थी संख्या 2 उपमण्डल अभियन्ता श्रीडूगरगढ के मौखिक आदेश से लाईनमेन के पद का कार्य सूडसर, दूरभाष केन्द्र पर किया हो। यह भी गलत है कि कार्य के दौरान विपक्षी के द्वारा प्रार्थी को 60 रुपये प्रतिदिन मजदूरी तथा 200 रुपये मासिक मकान किराया अदा किया जाता था।
15. प्रार्थी द्वारा प्रस्तुत स्टेटमेन्ट ऑफ क्लेम का मद सं. 3 जिस प्रकार प्रस्तुत किया गया है, स्वीकार नहीं है। प्रार्थी एवं अप्रार्थीगण के मध्य श्रमिक एवं नियोजक का सम्बन्ध नहीं था एवं जब सम्बन्ध ही नहीं था तो शिकायत का प्रश्न ही नहीं है। पूर्ण तथ्य अतिरिक्त कथन में वर्णित है।
16. प्रार्थी द्वारा प्रस्तुत स्टेटमेन्ट ऑफ क्लेम का मद सं. 4 जिस प्रकार प्रस्तुत किया गया है स्वीकार नहीं है। यह गलत है कि प्रार्थी को अप्रार्थीगण द्वारा दिनांक 24.9.2003 को अचानक मौखिक आदेश से सेवासे पृथक किया गया हो। जैसा कि उपर वर्णित किया गया है, प्रार्थी एवं अप्रार्थीगण के मध्य श्रमिक एवं नियोजक के सम्बन्ध नहीं थे, जब सम्बन्ध ही नहीं थे तो एक माह का नोटिस या एक माह नोटिस अवधि का वेतन भुगतान करने का प्रश्न ही नहीं था। यह भी गलत है कि अप्रार्थीगण के अधिकार क्षेत्र में किसी प्रकार का स्थाई प्रकृति का कार्य हो तथा वह कार्य वर्तमान में बना हुआ हो। यह भी गलत है कि अप्रार्थीगण द्वारा गैर कानूनी रूप से प्रार्थी श्रमिक को मौखिक आदेश दिनांक 24.9.2003 द्वारा सेवा से पृथक का दिया गया हो। पूर्ण तथ्य अतिरिक्त कथन में वर्णित हैं।
17. प्रार्थी द्वारा प्रस्तुत स्टेटमेन्ट ऑफ क्लेम का मद सं. 5 जिस प्रकार प्रस्तुत किया गया है, स्वीकार नहीं है। यह गलत है कि प्रार्थी श्रमिक ने विपक्षी नियोजक के यहां लगातार 240 दिन अथवा इससे कम दिवस तक कार्य किया हो। यह भी गलत है कि विपक्षी द्वारा प्रार्थी श्रमिक को मौखिक रूप से सेवा पृथक किया गया हो। यह भी गलत है कि 25 एफ औद्योगिक विवाद अधिनियम की पालना नहीं की गयी हो। यह भी गलत है कि कोई मौखिक सेवा-पृथक आदेश दिनांक 24.9.2003 गैर कानूनी रूप से किया गया हो। पूर्ण तथ्य अतिरिक्त कथन में वर्णित है।
18. प्रार्थी द्वारा प्रस्तुत स्टेटमेन्ट ऑफ क्लेम का मद सं. 6 जिस प्रकार प्रस्तुत किया गया है स्वीकार नहीं है। यह गलत है कि प्रार्थी की सेवा अप्रार्थी नियोजकगण द्वारा मौखिक आदेश दिनांक 24.9.2003 को बाद

दोपहर बतौर छंटनी समाप्त कर दी गयी हो। अप्रार्थी, प्रार्थी का नियोजक ही नहीं था, तो छंटनी से पूर्व वरीयता सूची नियोजकगण द्वारा जारी करने का प्रश्न ही नहीं उठता। यह भी गलत है कि अप्रार्थी संस्था में प्रार्थी जैसे करीब 300 से अधिक कर्मकार कार्यरत रहे हो। यह भी गलत है कि अप्रार्थी संस्था में प्रार्थी के पद का कार्य एवं पद रिक्त होते हुए भी अप्रार्थी द्वारा प्रार्थी को उसकी सेवा अवधि के अनुरूप नियमित सेवा का लाभ नहीं दिया हो। पूर्ण तथ्य अतिरिक्त कथन में वर्णित है।

19. प्रार्थी द्वारा प्रस्तुत स्टेटमेन्ट ऑफ क्लेम का मद सं. 7 जिस प्रकार प्रस्तुत किया गया है स्वीकार नहीं है। यह गलत है कि अप्रार्थीगण द्वारा प्रार्थी को सेवा पृथक किया गया हो। यह भी गलत है कि प्रार्थी औद्योगिक विवाद अधिनियम की धारा 25 एच के अन्तर्गत अप्रार्थीगण से निर्धारित वेतन अथवा नोटिस वेतन तथा छंटनी मुआवजा राशि प्राप्त करने का अधिकारी हो अथवा प्रार्थी की सेवा पृथक करने से पूर्व किसी वरिष्ठता सूची प्रकाशित करने की आवश्यकता हो। सारी बातें अर्थहीन हैं। जब प्रार्थी व अप्रार्थीगण का सम्बन्ध नियोक्ता व कर्मकार का था ही नहीं तो सेवापृथक करना, छंटनी करना या नोटिस या वेतन नोटिस, छंटनी मुआवजा राशि की बात करना अर्थहीन है, अस्पष्ट है। पूर्ण तथ्य अतिरिक्त कथन में वर्णित है।

20. प्रार्थी द्वारा प्रस्तुत स्टेटमेन्ट ऑफ क्लेम का मद सं. 8 जिस प्रकार प्रस्तुत किया गया है स्वीकार नहीं है। यह गलत है कि अप्रार्थीगण द्वारा प्रार्थी के साथ में या प्रार्थी के बाद में कनिष्ठ कर्मकारों को सेवापृथक नहीं किया गया तथा उन्हें बदस्तूर सेवा में बनाये रखा गया। यह भी गलत है कि प्रार्थी, अप्रार्थीगण के नियोजन में नियोजित रहते हुये नियमित सेवा का लाभ प्राप्त कर चुके हो। यह भी गलत है कि प्रथम आये आखिर जाये सिद्धान्त की पालना नहीं की गई हो। यह मद मात्र श्रीमान को प्रिज्यूडिस करने के प्रयोजन से लिखा गया है जो अर्थहीन एवं अस्पष्ट है। पूर्ण तथ्य अतिरिक्त कथन में वर्णित है।

21. प्रार्थी द्वारा प्रस्तुत स्टेटमेन्ट ऑफ क्लेम का मद सं. 9 जिस प्रकार प्रस्तुत किया गया है स्वीकार नहीं है। यह गलत है कि प्रार्थी को अप्रार्थी द्वारा सेवापृथक किया गया हो। यह भी गलत है कि औद्योगिक विवाद अधिनियम की धारा 25 एच का कोई उल्लंघन किया गया है। पूर्ण तथ्य अतिरिक्त कथन में वर्णित है।

22. प्रार्थी द्वारा प्रस्तुत स्टेटमेन्ट ऑफ क्लेम का मद सं. 10 जिस प्रकार प्रस्तुत किया गया है स्वीकार नहीं है। यह गलत है कि औद्योगिक विवाद अधिनियम की धारा 77 व 78 का उल्लंघन किया गया है। औद्योगिक विवाद अधिनियम में मात्र 40 धारायें हैं। अभी तक औद्योगिक विवाद अधिनियम की धारा 77 व 78 गठित नहीं की गई है।

23. प्रार्थी द्वारा प्रस्तुत स्टेटमेन्ट ऑफ क्लेम का मद सं. 11 जिस प्रकार प्रस्तुत किया गया है स्वीकार नहीं है। अप्रार्थीगण द्वारा जब सेवापृथक किया ही नहीं गया है तो अवैधानिक रूप से सेवापृथक करने का प्रश्न ही नहीं उठता है। यह गलत है कि प्रार्थी सेवा अप्रार्थीगण द्वारा औद्योगिक विवाद अधिनियम की 5 वी अनुसूची के अन्तर्गत श्रमिक विरोधी निति को अपनाते हुए समाप्त की गई हो। यह भी गलत है कि प्रार्थी ने अप्रार्थीगण से पुनः सेवा में लेने का बार बार अनुरोध किया गया हो। यह भी गलत है कि अप्रार्थीगण ने कोई आश्वासन दिया हो। जब प्रार्थी अप्रार्थीगण की सेवा में था ही नहीं तो आश्वासन देने का प्रश्न ही नहीं था। मात्र श्रीमान को प्रिज्यूडिस करने हेतु असत्य वचन लिख गये हैं। पूर्ण तथ्य अतिरिक्त कथन में वर्णित है।

24. प्रार्थी द्वारा प्रस्तुत स्टेटमेन्ट ऑफ क्लेम का मद सं. 12 जिस प्रकार प्रस्तुत किया गया है स्वीकार नहीं है।

25. प्रार्थी द्वारा प्रस्तुत स्टेटमेन्ट ऑफ क्लेम का मद सं. 13 जिस प्रकार प्रस्तुत किया गया है, स्वीकार नहीं है।

26. अतिरिक्त कथन में कहा गया है कि प्रार्थी क्लीन हैण्डस से श्रीमान के समक्ष नहीं आया है। वह श्रीमान से कोई अनुतोष प्राप्त करने का अधिकारी नहीं है।

27. प्रार्थी ने यह तथ्य छिपाया है कि टेलिकॉम जिला प्रबन्धक, चूरु एवं प्रेजीडेन्ट, झून्झूनु डिस्ट्रिक्ट एक्स सर्विसमेन वेलफेयर एजेन्सी, झून्झूनु के मध्य एक अनुबन्ध 14.7.2000 को निष्पादित किया गया था, जिसके अनुसार उक्त ठेकेदार ने अस्थाई प्रकृति का ठेका लिया था। एजेन्सी द्वारा डाईवर, सिक्योरिटी सुपरवाइजर, सिक्योरिटी गार्ड इत्यादि के कार्य के प्रयोजन से आदमी उपलब्ध करवा कर कार्य करना था। इस अनुबन्ध की पालना में एजेन्सी द्वारा समय-समय पर आवश्यकता के अनुसार आदमी उपलब्ध करवाये एवं आवश्यकतानुसार उनसे कार्य करवाया गया एवं एजेन्सी को भुगतान किया गया।

28. कार्य करने वाले व्यक्ति कभी भी अप्रार्थीगण के नियोजन में नहीं रहे। वह अस्थाई रूप से कार्य के प्रकृति के अनुसार एजेन्सी के ही नियोजन में रहे।
29. डी.ई. (प्रशासन), टी.डी.एम. चूरु एवं अध्यक्ष, एक्स सर्विसमेन वेलफेयर एजेन्सी, झूझूनु द्वारा दिनांक 14.7.2001 को फिर टेका एक वर्ष के लिए बढ़ाया गया व उनकी सुविधा के अनुसार उनके द्वारा आवंटित व्यक्तियों ने समय-समय पर कार्य किया है। वह भी अप्रार्थीगण के नियोजन में नहीं रहे बल्कि ठेकेदार के अधीन अस्थाई रूप से रहे।
30. प्रार्थी ने यह तथ्य भी छिपाया है कि दिनांक 8.2.2004 को टेलिकॉम जिला प्रबन्धक, चूरु भारत संचार निगम लि. (जो पूर्व में टेलिकॉम विभाग इण्डिया था) एवं प्रेजीडेन्ट एक्स सर्विसमेन वेलफेयर एजेन्सी, झूझूनु के मध्य भी इसी प्रकार कार्य बाबत अनुबन्ध किया गया था जिसके द्वारा दिनांक 8.8.2002 एवं दिनांक 8.11.2002 को अनुबन्ध विस्तार किया गया जो अनुबन्ध विस्तार फिर दिनांक 25.8.2003 को किया गया।
31. प्रार्थी ठेकेदार के नियोजन में अस्थाई रूप से रहा है तो उसका कोई अधिकार अप्रार्थीगण के नियोजन में रहने का नहीं बनता है। यह भी कहा गया है कि जिन तथ्यों को स्पष्ट रूप से स्वीकार नहीं किया गया है उन्हें अस्वीकार माना जावे एवं प्रार्थी की याचिका हर्ज सहित खारिज किया जाय।
32. रिज्वायन्डर में प्रार्थी ने जवाब के अभिकथनों को अस्वीकार किया है एवं याचिका के कथन को सही ठहराने सम्बन्धित कथन प्रस्तुत किया है।
33. मैनें विपक्षी के विद्वान प्रतिनिधिगण की बहस सुनी तथा पत्रावली का सम्यक् अवलोकन किया।
34. प्रार्थी ने दिनांक 21.5.13 को साक्ष्य में अपनी शपथ-पत्र प्रस्तुत की है लेकिन तब से दिनांक 28.4.16 तक प्रार्थी प्रतिपरीक्षा के लिए उपस्थित नहीं आया। दिनांक 28.4.16 को याची के विद्वान प्रतिनिधि ने उल्लेख किया कि याची से सम्पर्क नहीं हो पा रहा है अतः याची को प्रतिपरीक्षा हेतु अन्तिम अवसर प्रदान कर दिनांक 18.7.16 साक्ष्य हेतु तिथि नियत की गयी। दिनांक 18.7.16 को उभयपक्ष अनुपस्थित रहे अतः न्यायाधिकरण ने न्यायहित में कार्यवाही मुलतवी कर पुनः याची को अन्तिम अवसर प्रदान करते हुए दिनांक 23.8.16 साक्ष्य हेतु तिथि नियत की। दिनांक 23.8.16 को भी याची उपस्थित नहीं आया। उभयपक्ष के विद्वान प्रतिनिधि उपस्थित आये। विपक्ष की मुलतवी आवेदन पर अगली तिथि दिनांक 1.11.16 नियत की गयी। दिनांक 1.11.16 को उभयपक्ष अनुपस्थित रहे तथा पीठासीन अधिकारी अवकाश पर थे अतः अगली तिथि 26.12.16 नियत की गयी।
35. दिनांक 26.12.16 को न याची और न ही याची के विद्वान प्रतिनिधि उपस्थित आये। विपक्षी के विद्वान प्रतिनिधि उपस्थित आये। न्यायालय की समय समाप्ति तक इन्तजार किया गया और याची के उपस्थित न आने के कारण याची को प्रतिपरीक्षा कराने का अवसर समाप्त किया गया। विपक्ष के विद्वान प्रतिनिधि ने विपक्ष के साक्ष्य के सम्बन्ध में बयान किया कि याची की तरफ से साक्ष्य प्रस्तुत नहीं किया गया है इसलिए विपक्ष को साक्ष्य नहीं प्रस्तुत करना है, अतः विपक्ष का साक्ष्य भी समाप्त किया गया।

### **बहस**

36. विपक्ष के विद्वान प्रतिनिधि ने बहस की हे कि याची ने याचिका में कथन के समर्थन में कोई साक्ष्य नहीं प्रस्तुत किया है तथा अपनी प्रतिपरीक्षा भी नहीं करायी है अतः याची की साक्ष्य में प्रस्तुत शपथ-पत्र भी साक्ष्य में ग्रहण नहीं की जा सकती है। यह बहस भी की है कि याची कभी विपक्षी के नियोजन में नहीं रहा तथा नियोक्ता एवं कर्मकार का सम्बन्ध उभयपक्ष के बीच कभी नहीं रहा है अतः याची ठेकेदार का कर्मचारी रहा है, अतः याचिका खारिज की जाय।

### **निष्कर्ष**

37. विपक्षी के विद्वान प्रतिनिधि की बहस सारवान है कि याची प्रतिपरीक्षा में उपस्थित नहीं हुआ है इसलिए उसकी मुख्य परीक्षा के रूप में प्रस्तुत शपथ-पत्र साक्ष्य में ग्रहणीय नहीं है। यहाँ पर इस तथ्य का उल्लेख करना महत्वपूर्ण है कि याची ने साक्ष्य में जो शपथ-पत्र दिनांक 21.5.2013 को प्रस्तुत की है इस शपथ-पत्र को प्रार्थी ने दिनांक 31.5.2011 को शपथ कमिश्नर के समक्ष सत्यापित करवाया है परन्तु लगभग दो साल तक अपने पास रखने के बाद दिनांक 31.5.2015 को न्यायाधिकरण के समक्ष प्रस्तुत किया है और प्रस्तुति के बाद अनेक अवसर दिये जाने के बावजूद प्रतिपरीक्षा हेतु उपस्थित नहीं आया है। उक्त स्थिति से

यह प्रकट होता है कि प्रार्थी को इस मामले को आगे चलाने में कोई रुचि नहीं है तथा मामला अनावश्यक लम्बित चल रहा है जिससे साक्ष्य का अवसर समाप्त किया गया है। उक्त तथ्य एवं परिस्थिति में मैं इस निष्कर्ष पर हूँ कि याची इस तथ्य को सिद्ध करने में सफल नहीं है कि दिनांक 24.9.2003 से याची श्री दामोदर पुत्र श्री गिरधारी सिंह, लाइनमेन की सेवायें भारत संचार निगम लिमिटेड, बिकानेर के प्रबन्धन द्वारा वजरिये महाप्रबन्धक समाप्त करना विधिसंगत एवं उचित नहीं है। याची तदनुसार याचित अनुतोष को पाने के हकदार नहीं है। याची की याचिका खारिज की जाती है। मन्त्रालय द्वारा इस मामले में न्यायनिर्णयन हेतु प्रेषित रिफरेंस का उत्तर तदनुसार दिया जाता है। पंचाट तदनुसार पारित किया जाता है।

भरत पाण्डेय, पीठासीन अधिकारी

नई दिल्ली, 6 मार्च, 2017

**का.आ. 702.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डाकघरों का अधीक्षक, डाकघर व अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 19/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.11.2016 को प्राप्त हुआ था।

[सं. एल-40012/133/2004-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th March, 2017

**S.O. 702.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 19/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the Superintendent of Post Offices, Post Office and their workman, which was received by the Central Government on 02.11.2016.

[No. L-40012/133/2004-IR (DU)]

RAJENDAR JOSHI, Dy. Director

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

#### Present :

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,  
Dated 13<sup>th</sup> October, 2016

#### Reference: (CGITA) No. 19/2005

The Supdt. of Post Offices,  
Deptt. of Post,  
Divisional Post Office,  
Gandhigram,  
Junagadh (Gujarat) – 362001

...First Party

#### V/s

Shri A.H. Vasavada C/o Shri R.H. Dhebar,  
Madh Street, Divan Khadki,  
Opp. Moti Bhuvan, Junagadh (Gujarat)

...Second Party

For the First Party : Shri P.M. Rami

For the Second Party :

**AWARD**

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/133/2004-IR(DU) dated 09.12.2004/28.01.2005 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

**SCHEDULE**

“Whether the action of the management of Supdt. Of Post Offices, Junagadh in terminating the services of Shri Ahailsh H. Vasavada, Extra Departmental Packer w.e.f. 18.05.1999 is legal and justified? If not, what relief the workman concerned is entitled to?”

1. The reference dates back to 09.12.2004/28.01.2005. The second party submitted the statement of claim Ext. 7 on 06.08.2008 and first party submitted the written statement Ext. 14 on 25.10.2012. Since then the second party has been absent and has not been leading his evidence. The first party has also moved applications Ext. 16 and 17 on 23.09.2013 and 13.10.2016 respectively for disposing off the reference in the absence of the evidence of the second party. Thus it appears that the second party is not willing to prosecute the case.
2. Therefore, the reference is disposed of as “the action of the management of Supdt. Of Post Offices, Junagadh in terminating the services of Shri Ahailsh H. Vasavada, Extra Departmental Packer w.e.f. 18.05.1999 is legal and justified” in the absence of the evidence of the second party.
3. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 मार्च, 2017

**का.आ. 703.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार दूर संचार जिला महाप्रबंधक, भारत संचार निगम लिमिटेड व अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 122/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.02.2017 को प्राप्त हुआ था।

[सं. एल-40012/34/2003-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th March, 2017

**S.O. 703.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 122/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the Telecom District General Manager, Bharat Sanchar Nigam Ltd. and their workman, which was received by the Central Government on 15.02.2017.

[No. L-40012/34/2003-IR (DU)]

RAJENDAR JOSHI, Dy. Director

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,  
Dated 30<sup>th</sup> January, 2017

**Reference: (CGITA) No. 122/2005**

The Telecom District Manager,  
BSNL, 3<sup>rd</sup> Floor, Diamond Market,  
Jamnagar (Gujarat)

...First Party

V/s



Shri Ramdeep Verma  
C/o Mazdoor Mahajan Sangh,  
Opp. Engineer Office,  
K.V. Road,  
Jamnagar

...Second Party

For the First Party : Shri H.R. Raval

For the Second Party : Shri Chintan Gohel and R.C. Pathak

### AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/34/2003-IR(DU) dated 15.12.2005 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

### SCHEDULE

“Whether the action of the management of Telecom District Manager, BSNL, Jamnagar in terminating the services of Shri Ramdeep Vasudevprasad Verma w.ef. 30.06.1985 is just and legal? If not, to what relief the workman is entitled?”

1. The reference dates back to 15.12.2005. The second party submitted the statement of claim Ex. 11 on 20.11.2013. First party submitted the written statement Ex. 13 on 26.03.2015. Thereafter the workman died and the legal heir of the workman moved an application Ex. 14 for substitution as legal heir of the second party workman. Now today on 30.01.2017, the advocate of the legal heir of the second party Chintan Gohel and R.C. Pathak moved an application Ex. 19 in which they expressed unwillingness to lead any evidence. Consequently the first party has also orally expressed unwillingness to lead any evidence.
2. As second party has not lead any evidence as to whether was the deceased workman Ramdeep Vasudevprasad Verma of the first party employer or not and has also not lead any evidence as to whether he worked for the period which may entitle the workman for declaring his termination from service as illegal and just.
3. Thus in the absence of evidence, the deceased workman cannot be treated as workman which may entitle him for any benefit and as well as of declaring the termination of service as illegal.
4. Thus in the absence of the evidence of the workman, the reference is decided with the observation as under: “the action of the management of Telecom District Manager, BSNL, Jamnagar in terminating the services of Shri Ramdeep Vasudevprasad Verma w.ef. 30.06.1985 is just and legal and therefore, no relief can be granted.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 मार्च, 2017

**का.आ. 704.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार महाप्रबंधक दूर संचार जिला, भारत संचार निगम लिमिटेड व अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 93 का 2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.01.2017 को प्राप्त हुआ था।

[ सं. एल-40011/42/2012-आईआर (डीयू) ]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th March, 2017

**S.O. 704.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 93/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager Telecom District, Bharat Sanchar Nigam Ltd. and their workman, which was received by the Central Government on 17.01.2017.

[No. L-40011/42/2012-IR (DU)]

RAJENDAR JOSHI, Dy. Director

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,  
Dated 3<sup>rd</sup> January, 2017

**Reference: (CGITA) No. 93/2013**

The General Manager Telecom District,  
Bharat Sanchar Nigam Ltd.,  
New Telephone Exchange Building, Halar Road,  
Valsad (Gujarat) – 396001

...First Party

**V/s**

The Secretary,  
Gujarat Rajya Ardgsarjaru Audhyogik Karmachari Sangh,  
4, Deeplex Apartments, 1<sup>st</sup> Floor, Vastrapur,  
Ahmedabad (Gujarat) – 380001

...Second Party

For the First Party :

For the Second Party :

**AWARD**

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40011/42/2012-IR(DU) dated 15.04.2013 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

**SCHEDULE**

“Whether the demand of the union for cancellation of transfer order dated 18.05.2012 in respect of Shri N.J. Tandel within the meaning of deemed recognized workman in response to their application dated 28.03.2012 for declaration of protected workman is legal, proper and just? To what relief the concerned workman is entitled to?”

1. The reference dates back to 15.04.2013. Both the parties were served by registered post. Acknowledgement of service on second party workman was received vide Ext. 3 on 10.02.2015. Despite a lapse of about 2 years, second party has not submitted the statement of claim. It is noteworthy that despite service, the second party did not appear and has also not filed the statement of claim. A last opportunity was given to the second party workman in his absence to submit the statement of claim on 25.05.2016 but on subsequent every date 25.05.2016, 04.10.2016 and today on 03.01.2017, the second party did not appear and also did not care to submit the statement of claim. Thus it appears that the second party has no willingness to prosecute the case.

2. Therefore, the reference in the absence of the statement of claim and supporting evidence of the second party workman is disposed of with the observation as under: “the demand of the union for cancellation of transfer order dated 18.05.2012 in respect of Shri N.J. Tandel within the meaning of deemed recognized workman in response to their application dated 28.03.2012 for declaration of protected workman is not legal, proper and just.”

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 मार्च, 2017

**का.आ. 705.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय निदेशक प्रौद्योगिकी के एम/एस सरदार वल्लभभाई राष्ट्रीय, व अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 132/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.02.2017 को प्राप्त हुआ था।

[सं. एल-42012/39/2013-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th March, 2017

**S.O. 705.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 132/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the Director, M/s. Sardar Vallabhbhai National of Technology, and their workman, which was received by the Central Government on 15.2.2017.

[No. L-42012/39/2013-IR (DU)]

RAJENDAR JOSHI, Dy. Director

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

**Present :** Pramod Kumar Chaturvedi, Presiding Officer,  
CGIT-cum-Labour Court,  
Ahmedabad,

Dated 18<sup>th</sup> January, 2017

#### Reference: (CGITA) No. 132/2013

The Director,  
M/s. Sardar Vallabhbhai National Institute of Technology,  
Ichchhanath,  
Surat (Gujarat)

...First Party

V/s  
Mr. Chandrakant Tukaram Chandlekar,  
Post Madel, Tal. Mahad, Distt. Raigadh,  
Maharashtra

...Second Party

For the First Party : None  
For the Second Party : Shri L.M. Patil

#### AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-42012/39/2013-IR(DU) dated 18.07.2013 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

#### SCHEDULE

“Whether the establishment of Sardar Vallabhbhai National Institute of Technology, Surat falls under the definition of ‘Industry’ as per the provisions of Industrial Disputes Act, 1947 or not?”

“If yes, whether the demand of the workmen Mr. Chandrakant Tukaram Chandlekar, Rajgarh (terminated orally on 14.07.2012) for reinstatement in service in his original post will full back wages is legal, proper and just? To what relief the concerned workman is entitled to?”

1. The reference dates back to 18.07.2013. In response to the notice issued to both the parties by the tribunal, the second party workman ChandrakantTukaramChandlekar submitted the vakalatpatra Ex. 3 and statement of claim Ex. 4 on 02.02.2016. The first party was issued notice twice, firstly on 17.07.2013 to appear on 25.06.2014 and secondly on 02.02.2016 to appear on 07.06.2016 which were served on the first party. Acknowledgement of service Ex. 6 was received by the tribunal but first party did not prefer to submit the written statement, therefore, on 24.08.2016; a last opportunity was given to the first party to submit written statement failing which the case was ordered to proceed ex-parte against the first party. The first party did not prefer to submit the written statement despite giving last opportunity in absentia. Therefore, the matter was taken up as ex-parte against the first party.
2. The second party workman submitted his affidavit Ex. 7 in lieu of his oral evidence. The said affidavit was also served on the first party The Director, M/s SardarVallabhbbhai National Institute of Technology, Ichchhanath, Surat but the first party did not prefer to take the notice of the affidavit. Therefore, this tribunal has no option but to pass the award as per law.
3. The second party workman in his statement of claim Ex. 4 has alleged that he was working as hostel boy in the first party establishment and his services were terminated illegally and arbitrary by the first party. He raised an industrial dispute under Section 10 (1) of the Industrial Disputes Act, before the Assistant Labour Commissioner cum Conciliation Officer where both the parties appeared and submitted their written submission. The conciliation failed therefore, Assistant Labour Commissioner cum Conciliation Officer referred the dispute to the appropriate government for the reference in question before the tribunal. He has further alleged that he had been working with the first party for last 17 year as hostel boy drawing Rs. 203/- per day as daily wager. His duty was to keep the hostel room neat and clean. He worked for more than 240 days in each and every calendar year but his services were arbitrary terminated by an oral order on 14.07.2012 without giving any cause and proper reason. The first party never prepared the seniority list of the daily wager. At the time of termination of his service, junior employees were kept in service, violative in the seniority principle. He was not served with any retrenchment notice and also was not paid any retrenchment compensation at the time of termination of service. He has further alleged that after terminating his service, first party employer engaged some other daily wage employee in his place without inviting him to join as daily wager, thus violated the provisions of Section 25 G & H of the Industrial Disputes Act. He has further alleged that Government of India introduced a new scheme as per the 6<sup>th</sup> pay commission recommendation to engaged supporting staff but the first party did not engaged the supporting staff and switch over to the contract system which was not permissible. He expressed his willingness to work as daily wager but he was denied his engagement as daily wager. The first party is an industry within the meaning of Section 2 (j) of the Industrial Disputes Act, for the purpose of running the hostel providing the students to stay with the facility of kitchen/canteen/mess for the students studying in the first party institution. Therefore, the termination of his service was illegal and violative of Section 25 F, G & H of the Industrial Disputes Act. Therefore, he has prayed for reinstatement of his service with back wages.
4. As already stated, the first party did not prefer to appear and file the written statement, therefore, the case was ordered to proceed ex-parte against the first party and the second party workman filed his affidavit Ex. 7 reiterating the averments made in the statement of claim Ex. 4.
5. There is no reason to disbelieve the affidavit Ex. 7 of the workman wherein he has stated on oath that he worked for more than 17 years as hostel boy for keeping up the hostel meant for the students studying in the first party institution for than 240 days in each and every calendar year. He has further stated that his service was terminated arbitrarily and illegally without serving notice and praying retrenchment compensation. He has further stated that after termination of his service; some other boys were engaged who were either junior to him or new one.
6. As regards the question of first party institution as industry under Section 2 (J) of Industrial Disputes Act, the hostel activity attached to the institution is of commercial nature. Therefore, the institution can be said to be an industry within the meaning of the Section 2 (j) of the Industrial Disputes Act and removal of the workman without serving notice and paying retrenchment compensation will definitely come within the meaning of Section 25 F, G & H of the Industrial Disputes Act.
7. Therefore, I come to the conclusion that the second party was illegally removed and deserves reinstatement in service in his original post within 60 days from the date of the publication of this award.
8. The award is passed accordingly.

P.K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 मार्च, 2017

**का.आ. 706.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय निदेशक प्रौद्योगिकी के एम/एस सरदार वल्लभभाई राष्ट्रीय, व अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 139/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.02.2017 को प्राप्त हुआ था।

[ सं. एल-42012/37/2013-आईआर (डीयू) ]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th March, 2017

**S.O. 706.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 139/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the Director, M/s. Sardar Vallabhbhai National of Technology, and their workman, which was received by the Central Government on 15.2.2017.

[No. L-42012/37/2013-IR (DU)]

RAJENDAR JOSHI, Dy. Director

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

**Present :** Pramod Kumar Chaturvedi, Presiding Officer,

CGIT cum Labour Court, Ahmedabad,

Dated 18<sup>th</sup> January, 2017

#### Reference: (CGITA) No- 139/2013

The Director,  
M/s. SardarVallabhbhai National Institute of Technology,  
Ichchhanath,  
Surat (Gujarat)

...First Party

V/s

Mr. Gurjibhai Chemabhai Gamit,  
Village Borepada, Nichlu Faliyu,  
Tal. Sonagadh, Tapi

...Second Party

For the First Party : None  
For the Second Party : Shri L.M. Patil

#### AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-42012/37/2013-IR(DU) dated 17.07.2013 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

#### SCHEDULE

“Whether the establishment of SardarVallabhbhai National Institute of Technology, Surat falls under the definition of ‘Industry’ as per the provisions of Industrial Disputes Act, 1947 or not?”

“If yes, whether the demand of the workmen Shri Gurjibhai Chemabhai Gamit (terminated orally on 14.07.2012) for reinstatement in service in his original post will full back wages is legal, proper and just? To what relief the concerned workman is entitled to?”

1. The reference dates back to 17.07.2013. In response to the notice issued to both the parties by the tribunal, the second party workman Gurjibhai Chemabhai Gamit submitted the vakalatpatra Ex. 3 and statement of claim Ex. 4 on 02.02.2016. The first party was issued notice twice, firstly on 17.07.2013 to appear on 25.06.2014 and secondly on 02.02.2016 to appear on 07.06.2016 which were served on the first party. Acknowledgement of service Ex. 6 was

received by the tribunal but first party did not prefer to submit the written statement, therefore, on 24.08.2016, a last opportunity was given to the first party to submit written statement failing which the case was ordered to proceed ex-parte against the first party. The first party did not prefer to submit the written statement despite giving last opportunity in absentia. Therefore, the matter was taken up as ex-parte against the first party.

2. The second party workman submitted his affidavit Ex. 7 in lieu of his oral evidence. The said affidavit was also served on the first party The Director, M/s SardarVallabhbai National Institute of Technology, Ichchhanath, Surat but the first party did not prefer to take the notice of the affidavit. Therefore, this tribunal has no option but to pass the award as per law.

3. The second party workman in his statement of claim Ex. 4 has alleged that he was working as hostel boy in the first party establishment and his services were terminated illegally and arbitrary by the first party. He raised an industrial dispute under Section 10 (1) of the Industrial Disputes Act, before the Assistant Labour Commissioner cum Conciliation Officer where both the parties appeared and submitted their written submission. The conciliation failed therefore, Assistant Labour Commissioner cum Conciliation Officer referred the dispute to the appropriate government for the reference in question before the tribunal. He has further alleged that he had been working with the first party for last 17 year as hostel boy drawing Rs. 203/- per day as daily wager. His duty was to keep the hostel room neat and clean. He worked for more than 240 days in each and every calendar year but his services were arbitrary terminated by an oral order on 14.07.2012 without giving any cause and proper reason. The first party never prepared the seniority list of the daily wager. At the time of termination of his service, junior employees were kept in service, violative in the seniority principle. He was not served with any retrenchment notice and also was not paid any retrenchment compensation at the time of termination of service. He has further alleged that after terminating his service, first party employer engaged some other daily wage employee in his place without inviting him to join as daily wager, thus violated the provisions of Section 25 G & H of the Industrial Disputes Act. He has further alleged that Government of India introduced a new scheme as per the 6<sup>th</sup> pay commission recommendation to engaged supporting staff but the first party did not engaged the supporting staff and switch over to the contract system which was not permissible. He expressed his willingness to work as daily wager but he was denied his engagement as daily wager. The first party is an industry within the meaning of Section 2 (j) of the Industrial Disputes Act, for the purpose of running the hostel providing the students to stay with the facility of kitchen/canteen/mess for the students studying in the first party institution. Therefore, the termination of his service was illegal and violative of Section 25 F, G & H of the Industrial Disputes Act. Therefore, he has prayed for reinstatement of his service with back wages.

4. As already stated, the first party did not prefer to appear and file the written statement, therefore, the case was ordered to proceed ex-parte against the first party and the second party workman filed his affidavit Ex. 7 reiterating the averments made in the statement of claim Ex. 4.

5. There is no reason to disbelieve the affidavit Ex. 7 of the workman wherein he has stated on oath that he worked for more than 17 years as hostel boy for keeping up the hostel meant for the students studying in the first party institution for than 240 days in each and every calendar year. He has further stated that his service was terminated arbitrarily and illegally without serving notice and praying retrenchment compensation. He has further stated that after termination of his service; some other boys were engaged who were either junior to him or new one.

6. As regards the question of first party institution as industry under Section 2 (J) of Industrial Disputes Act, the hostel activity attached to the institution is of commercial nature. Therefore, the institution can be said to be an industry within the meaning of the Section 2 (j) of the Industrial Disputes Act and removal of the workman without serving notice and paying retrenchment compensation will definitely come within the meaning of Section 25 F, G & H of the Industrial Disputes Act.

7. Therefore, I come to the conclusion that the second party was illegally removed and deserves reinstatement in service in his original post within 60 days from the date of the publication of this award.

8. The award is passed accordingly.

P.K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 मार्च, 2017

**का.आ. 707.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय निदेशक प्रौद्योगिकी के एम/एस सरदार वल्लभभाई राष्ट्रीय, व अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 142/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.02.2017 को प्राप्त हुआ था।

[सं. एल-42012/38/2013-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th March, 2017

**S.O. 707.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 142/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the Director, M/s. Sardar Vallabhbhai National of Technology, and their workman, which was received by the Central Government on 15.2.2017.

[No. L-42012/38/2013-IR (DU)]

RAJENDAR JOSHI, Dy. Director

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
AHMEDABAD**

**Present :** PRAMOD KUMAR CHATURVEDI, Presiding Officer,  
CGIT cum -Labour Court,  
Ahmedabad,  
Dated 18<sup>th</sup> January, 2017

**Reference: (CGITA) No. 142/2013**

The Director,  
M/s. Sardar Vallabhbhai National Institute of Technology,  
Ichchhanath, Surat (Gujarat)

...First Party

V/s

Mr. Tukaram Sitaram Parmar,  
Post Madel, Tal. Mahad,  
Dist. Raigadh, Maharashtra

...Second Party

For the First Party : None

For the Second Party : Shri L.M. Patil

**AWARD**

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-42012/38/2013-IR(DU) dated 19.07.2013 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

**SCHEDULE**

“Whether the establishment of Sardar Vallabhbhai National Institute of Technology, Surat falls under the definition of ‘Industry’ as per the provisions of Industrial Disputes Act, 1947 or not?”

“If yes, whether the demand of the workmen Mr. Tukaram Sitaram Pawar, Rajgarh (terminated orally on 14.07.2012) for reinstatement in service in his original post with full back wages is legal, proper and just? To what relief the concerned workman is entitled to?”

1. The reference dates back to 19.07.2013. In response to the notice issued to both the parties by the tribunal, the second party workman Tukaram Sitaram Parmar submitted the vakalatpatra Ex. 3 and statement of claim Ex. 4 on 02.02.2016. The first party was issued notice twice, firstly on 17.07.2013 to appear on 25.06.2014 and secondly on 02.02.2016 to appear on 07.06.2016 which were served on the first party. Acknowledgement of service Ex. 6 was received by the tribunal but first party did not prefer to submit the written statement, therefore, on 24.08.2016; a last opportunity was given to the first party to submit written statement failing which the case was ordered to proceed ex-parte against the first party. The first party did not prefer to submit the written statement despite giving last opportunity in absentia. Therefore, the matter was taken up as ex-parte against the first party.
2. The second party workman submitted his affidavit Ex. 7 in lieu of his oral evidence. The said affidavit was also served on the first party The Director, M/s Sardar Vallabhbhai National Institute of Technology, Ichchhanath, Surat but the first party did not prefer to take the notice of the affidavit. Therefore, this tribunal has no option but to pass the award as per law.

3. The second party workman in his statement of claim Ex. 4 has alleged that he was working as hostel boy in the first party establishment and his services were terminated illegally and arbitrary by the first party. He raised an industrial dispute under Section 10 (1) of the Industrial Disputes Act, before the Assistant Labour Commissioner cum Conciliation Officer where both the parties appeared and submitted their written submission. The conciliation failed therefore, Assistant Labour Commissioner cum Conciliation Officer referred the dispute to the appropriate government for the reference in question before the tribunal. He has further alleged that he had been working with the first party for last 17 year as hostel boy drawing Rs. 203/- per day as daily wager. His duty was to keep the hostel room neat and clean. He worked for more than 240 days in each and every calendar year but his services were arbitrary terminated by an oral order on 14.07.2012 without giving any cause and proper reason. The first party never prepared the seniority list of the daily wager. At the time of termination of his service, junior employees were kept in service, violative in the seniority principle. He was not served with any retrenchment notice and also was not paid any retrenchment compensation at the time of termination of service. He has further alleged that after terminating his service, first party employer engaged some other daily wage employee in his place without inviting him to join as daily wager, thus violated the provisions of Section 25 G & H of the Industrial Disputes Act. He has further alleged that Government of India introduced a new scheme as per the 6<sup>th</sup> pay commission recommendation to engaged supporting staff but the first party did not engaged the supporting staff and switch over to the contract system which was not permissible. He expressed his willingness to work as daily wager but he was denied his engagement as daily wager. The first party is an industry within the meaning of Section 2 (j) of the Industrial Disputes Act, for the purpose of running the hostel providing the students to stay with the facility of kitchen/canteen/mess for the students studying in the first party institution. Therefore, the termination of his service was illegal and violative of Section 25 F, G & H of the Industrial Disputes Act. Therefore, he has prayed for reinstatement of his service with back wages.
4. As already stated, the first party did not prefer to appear and file the written statement, therefore, the case was ordered to proceed ex-parte against the first party and the second party workman filed his affidavit Ex. 7 reiterating the averments made in the statement of claim Ex. 4.
5. There is no reason to disbelieve the affidavit Ex. 7 of the workman wherein he has stated on oath that he worked for more than 17 years as hostel boy for keeping up the hostel meant for the students studying in the first party institution for than 240 days in each and every calendar year. He has further stated that his service was terminated arbitrarily and illegally without serving notice and praying retrenchment compensation. He has further stated that after termination of his service; some other boys were engaged who were either junior to him or new one.
6. As regards the question of first party institution as industry under Section 2 (J) of Industrial Disputes Act, the hostel activity attached to the institution is of commercial nature. Therefore, the institution can be said to be an industry within the meaning of the Section 2 (j) of the Industrial Disputes Act and removal of the workman without serving notice and paying retrenchment compensation will definitely come within the meaning of Section 25 F, G & H of the Industrial Disputes Act.
7. Therefore, I come to the conclusion that the second party was illegally removed and deserves reinstatement in service in his original post within 60 days from the date of the publication of this award.
8. The award is passed accordingly.

P.K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 मार्च, 2017

**का.आ. 708.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय निदेशक प्रौद्योगिकी के एम/एस सरदार वल्लभभाई राष्ट्रीय, व अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 151/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.02.2017 को प्राप्त हुआ था।

[सं. एल-42011/82/2013-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th March, 2017

**S.O. 708.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 151/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the Director, M/s. Sardar Vallabhabhai National of Technology, and their workman, which was received by the Central Government on 15.2.2017.

[No. L-42011/82/2013-IR (DU)]  
RAJENDAR JOSHI, Dy. Director



**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
AHMEDABAD**

**Present :** PRAMOD KUMAR CHATURVEDI, Presiding Officer,  
CGIT-cum Labour Court, Ahmedabad,  
Dated 18<sup>th</sup> January, 2017

**Reference: (CGITA) No- 151/2013**

The Director,  
M/s. Sardar Vallabhbhai National Institute of Technology,  
Ichchhanath,  
Surat (Gujarat)

...First Party

V/s

Mr. Chandrakant Tukaram Chandekar,  
Post Madel, Tal. Mahad,  
Distt. Raigadh, Maharashtra

**AND**

Virubhai Narsinhbhai Patel,  
Residing at Jari, Suwad Faliyu, Tal. Pansada,  
Navsari (Gujarat)

...Second Party

For the First Party : None  
For the Second Party : Shri L.M. Patil

**AWARD**

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-42011/82/2013-IR(DU) dated 21.08.2013 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

**SCHEDULE**

“Whether the establishment of Sardar Vallabhbhai National Institute of Technology, Surat falls under the definition of ‘Industry’ as per the provisions of Industrial Disputes Act, 1947 or not?”

“Whether the demand of the workman Shri Virubhai Narsinhbhai Patel for reinstatement in service in his original post will full back wages is legal, proper and just? To what relief the concerned workman Shri Virubhai Narsinhbhai Patel is entitled to?”

1. The reference dates back to 21.08.2013. Both the parties were issued notice to appear on 27.06.2014 consequently the second party submitted the vakalatpatra Ex. 3 on 10.03.2014 and also statement of claim Ex. 4 on 02.02.2016. First party did not prefer to appear and submit the written statement despite service of notice twice. Therefore, the case was ordered to proceed ex-parte against the first party but the second party did not prefer to submit the evidence.
2. Thus it appears that the second party workman has not been willing to prosecute the reference. Therefore, this tribunal has no alternative but to dispose of the reference in the absence of the second party workman with the observation as under: “the demand of the workman Shri Virubhai Narsinhbhai Patel for reinstatement in service in his original post will full back wages is not legal, proper and just.”

P.K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 मार्च, 2017

**का.आ. 709.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय निदेशक प्रौद्योगिकी के एम/एस सरदार वल्लभभाई राष्ट्रीय, व अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 143/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.02.2017 को प्राप्त हुआ था।

[सं. एल-42012/40/2013-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th March, 2017

**S.O. 709.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 143/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the Director, M/s. Sardar Vallabhbhai National of Technology, and their workman, which was received by the Central Government on 15.2.2017.

[No. L-42012/40/2013-IR (DU)]

RAJENDAR JOSHI, Dy. Director

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
AHMEDABAD**

**Present :** PRAMOD KUMAR CHATURVEDI, Presiding Officer,  
CGIT-cum Labour Court,  
Ahmedabad,  
Dated 18<sup>th</sup> January, 2017

**Reference: (CGITA) No. 143/2013**

The Director,  
M/s. Sardar Vallabhbhai National Institute of Technology,  
Ichchhanath,  
Surat (Gujarat)

...First Party

**V/s**

Mr. Saileshbhai Fuljibhai Patel,  
Village Rupvail Faliyu,  
Rayawadi, Tal. Vansda,  
Navsari (Gujarat)

...Second Party

For the First Party : None

For the Second Party : Shri L.M. Patil

**AWARD**

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-42012/40/2013-IR(DU) dated 19.07.2013 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

**SCHEDULE**

“Whether the establishment of Sardar Vallabhbhai National Institute of Technology, Surat falls under the definition of ‘Industry’ as per the provisions of Industrial Disputes Act, 1947 or not?”

“If yes, whether the demand of the workmen Mr. Saileshbhai Fuljibhai Patel, Navsari (terminated orally on 14.07.2012) for reinstatement in service in his original post will full back wages is legal, proper and just? To what relief the concerned workman is entitled to?”

1. The reference dates back to 19.07.2013. In response to the notice issued to both the parties by the tribunal, the second party workman Saileshbhai Fuljibhai Patel submitted the vakalatpatra Ex. 3 and statement of claim Ex. 4 on 02.02.2016. The first party was issued notice twice, firstly on 17.07.2013 to appear on 25.06.2014 and secondly on 02.02.2016 to appear on 07.06.2016 which were served on the first party. Acknowledgement of service Ex. 6 was received by the tribunal but first party did not prefer to submit the written statement, therefore, on 24.08.2016; a last opportunity was given to the first party to submit written statement failing which the case was ordered to proceed ex-parte against the first party. The first party did not prefer to submit the written statement despite giving last opportunity in absentia. Therefore, the matter was taken up as ex-parte against the first party.
2. The second party workman submitted his affidavit Ex. 7 in lieu of his oral evidence. The said affidavit was also served on the first party The Director, M/s Sardar Vallabhbhai National Institute of Technology,

Ichchhanath, Surat but the first party did not prefer to take the notice of the affidavit. Therefore, this tribunal has no option but to pass the award as per law.

3. The second party workman in his statement of claim Ex. 4 has alleged that he was working as hostel boy in the first party establishment and his services were terminated illegally and arbitrary by the first party. He raised an industrial dispute under Section 10 (1) of the Industrial Disputes Act, before the Assistant Labour Commissioner cum Conciliation Officer where both the parties appeared and submitted their written submission. The conciliation failed therefore, Assistant Labour Commissioner cum Conciliation Officer referred the dispute to the appropriate government for the reference in question before the tribunal. He has further alleged that he had been working with the first party for last 17 year as hostel boy drawing Rs. 203/- per day as daily wager. His duty was to keep the hostel room neat and clean. He worked for more than 240 days in each and every calendar year but his services were arbitrary terminated by an oral order on 14.07.2012 without giving any cause and proper reason. The first party never prepared the seniority list of the daily wager. At the time of termination of his service, junior employees were kept in service, violative in the seniority principle. He was not served with any retrenchment notice and also was not paid any retrenchment compensation at the time of termination of service. He has further alleged that after terminating his service, first party employer engaged some other daily wage employee in his place without inviting him to join as daily wager, thus violated the provisions of Section 25 G & H of the Industrial Disputes Act. He has further alleged that Government of India introduced a new scheme as per the 6<sup>th</sup> pay commission recommendation to engaged supporting staff but the first party did not engaged the supporting staff and switch over to the contract system which was not permissible. He expressed his willingness to work as daily wager but he was denied his engagement as daily wager. The first party is an industry within the meaning of Section 2 (j) of the Industrial Disputes Act, for the purpose of running the hostel providing the students to stay with the facility of kitchen/canteen/mess for the students studying in the first party institution. Therefore, the termination of his service was illegal and violative of Section 25 F, G & H of the Industrial Disputes Act. Therefore, he has prayed for reinstatement of his service with back wages.
4. As already stated, the first party did not prefer to appear and file the written statement, therefore, the case was ordered to proceed ex-parte against the first party and the second party workman filed his affidavit Ex. 7 reiterating the averments made in the statement of claim Ex. 4.
5. There is no reason to disbelieve the affidavit Ex. 7 of the workman wherein he has stated on oath that he worked for more than 17 years as hostel boy for keeping up the hostel meant for the students studying in the first party institution for than 240 days in each and every calendar year. He has further stated that his service was terminated arbitrarily and illegally without serving notice and praying retrenchment compensation. He has further stated that after termination of his service; some other boys were engaged who were either junior to him or new one.
6. As regards the question of first party institution as industry under Section 2 (J) of Industrial Disputes Act, the hostel activity attached to the institution is of commercial nature. Therefore, the institution can be said to be an industry within the meaning of the Section 2 (j) of the Industrial Disputes Act and removal of the workman without serving notice and paying retrenchment compensation will definitely come within the meaning of Section 25 F, G & H of the Industrial Disputes Act.
7. Therefore, I come to the conclusion that the second party was illegally removed and deserves reinstatement in service in his original post within 60 days from the date of the publication of this award.
8. The award is passed accordingly.

P.K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 मार्च, 2017

**का.आ. 710.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय मुख्य महाप्रबंधक, दूरसंचार विभाग, भारत संचार निगम लिमिटेड, व अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 193/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.1.2017 को प्राप्त हुआ था।

[ सं. एल-40011/12/2005-आईआर (डीयू) ]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th March, 2017

**S.O. 710.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 193/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the Chief General Manager, Telecom Deptt., Bharat Sanchar Nigam Ltd., and their workman, which was received by the Central Government on 17.1.2005.

[No. L-40011/12/20005-IR (DU)]

RAJENDAR JOSHI, Dy. Director

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
AHMEDABAD**

**Present :** PRAMOD KUMAR CHATURVEDI, Presiding Officer,

CGIT-cum-Labour Court,  
Ahmedabad,

Dated 10<sup>th</sup> January, 2017

**Reference: (CGITA) No. 193/2006**

1. The Chief General Manager,  
Telecom Deptt., Bharat Sanchar Nigam Ltd.,  
Gujarat Circle, Khanpur,  
Ahmedabad (Gujarat) – 380001
2. The Telecom District Manager, BSNL,  
Diamond Market, Near Amber Cinema,  
Jamnagar (Gujarat) - 361001

...First Party

**V/s**

The President,  
Association of Railway & Posts Employees,  
15, Shashi Flats, Near Swaminarayan Chowk,  
Jawaharnagar, Vasna Road,  
Ahmedabad (Gujarat) - 380007

...Second Party

For the First Party : Shri H.R. Raval

For the Second Party : Shri R.C. Pathak

**AWARD**

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40011/12/2005-IR(DU) dated 30.11.2006 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

**SCHEDULE**

“Whether the action of the management of Chief General Manager, Telecommunication Department, BSNL, Ahmedabad in terminating the services of their workman Shri Gordanbhai S. Mandavia, w.e.f. 17.10.1996 is legal and justified? If not, to what relief the workman is entitled to and from which date?”

1. The reference dates back to 30.11.2006. Both the parties were served by registered post on 26.03.2007. Acknowledgement of the service Ex. 3, 4 & 5 were received. Second party submitted the authority letter Ex. 8 and statement of claim Ex. 9 on 26.09.2008. First party submitted the vakalatpatra Ex. 7 of this advocate. First party also submitted the written statement Ex. 12. Shri R.C. Pathak, President of Association of Railway & Posts Employees moved an application Ex. 13 for withdrawal of the reference.
2. Therefore, the reference is disposed of as not pressed as the workman has already been reinstated.

P.K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 मार्च, 2017

**का.आ. 711.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय डाकघरों अधीक्षक, डाक विभाग, व अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 165/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2.11.2016 को प्राप्त हुआ था।

[सं. एल-42011/111/2012-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th March, 2017

**S.O. 711.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 165/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the Superintendent of post Offices, Department of post, and their workman, which was received by the Central Government on 2.11.2016.

[No. L-42011/111/2012-IR (DU)]

RAJENDAR JOSHI, Dy. Director

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
AHMEDABAD**

**Present :**

PRAMOD KUMAR CHATURVEDI, Presiding Officer,

CGIT-cum -Labour Court,  
Ahmedabad,  
Dated 06<sup>th</sup> October, 2016

**Reference: (CGITA) No. 165/2012**

The Superintendent of Post Offices,  
Department of Post,  
Junagadh Division,  
Junagadh (Gujarat)

...First Party

**V/s**

Shri B. R. Samarth,  
C/o Maha Gujarati General Works Union,  
Junagadh (Gujarat)

...Second Party

For the First Party : Shri P.M. Rami

For the Second Party : None

**AWARD**

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-42011/111/2012-IR(DU) dated 07.12.2012 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

**SCHEDULE**

“Whether the action of Management of Superintendent of Post Offices, Junagadh Division, Junagadh in terminating the services of Shri B R Samarth, Rural Servant w.e.f. 20.11.2009, without giving an opportunity, is legal and justified? If so, what relief the workman is entitled to?”

1. The reference dates back to 07.12.2012. Both the parties were served by registered post notices dated 18.12.2012 to appear on 20.05.2013. Shri P.M. Rami on behalf of the first party submitted his vakalatpatra Ext. 3 on 26.08.2013 but the second party even after service did not prefer to submit the statement of claim till 11.12.2015 when the learned counsel for the first party requested for closure of the reference on the ground that the second party has not preferred to submit the statement of claim. Therefore, a fresh notice was issued to second party B. R. Samarth on 13.04.2016 which was served on him as appears from the acknowledgement Ext. 6 as received after service. Today on 06.10.2016, the advocate for the first party moved an application Ext. 7 for the closure of the case as the second party has not responded even after service.

2. As appears from the personal service of the notice, second party does not appear to be willing to prosecute the case. Therefore, the reference is disposed of with a finding that the action of Management of Superintendent of Post Offices, Junagadh Division, Junagadh in terminating the services of Shri B R Samarth, Rural Servant w.e.f. 20.11.2009, without giving an opportunity, is legal and justified.

P.K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 मार्च, 2017

**का.आ. 712.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डाकघरों अधीक्षक डाकघर व अन्य एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ संख्या 92/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 9.1.2017 को प्राप्त हुआ था।

[सं. एल-40012/03/2013-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th March, 2017

**S.O. 712.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 92/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in Annexure, in the industrial dispute between the employers in relation to the Superintendent of Post Offices, Post Office, and their workman, which was received by the Central Government on 9.1.2017.

[No. L-40012/03/2013-IR (DU)]

RAJENDAR JOSHI, Dy. Director

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

**Present :** PRAMOD KUMAR CHATURVEDI, Presiding Officer,

CGIT-cum -Labour Court,  
Ahmedabad,  
Dated 29<sup>th</sup> December, 2016

#### Reference: (CGITA) No. 92/2013

The Superintendent of Post Offices,  
Post Office, Kachch Division, Bhuj-Kutch,  
Kutch (Gujarat) – 370001

...First Party

V/s

Shri Dinesh K. Gori,  
Bhathara Faliya,  
Bhangi Vas,  
Bhuj (Gujarat) – 370001

...Second Party

For the First Party : Shri P.M. Rami  
For the Second Party : Shri Chetan R. Vyas

**AWARD**

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-40012/03/2013-IR(DU) dated 15.04.2013 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

**SCHEDULE**

- (1) “Whether the action of the management of Department of Posts, Kachch Division, Bhuj in not giving the seniority on the basis of number of days worked by Shri Dinesh K. Gori and not offering him regular employment in the department is justified?”
- (2) “Whether the action of Department of Posts, Kachchh Division in termination the services of Shri Dinesh K. Gori w.e.f. 23.12.2011 without following due process of law is justified? To what relief the workman is entitled to?”

1. The reference dates back to 15.04.2013. On issuing notices to the parties, the second party workman Dinesh Krishan Gori submitted his statement of claim Ext. 8 alleging that the first party Superintendent of Post Offices is industry within the meaning of Section 2 (J) of the Industrial Disputes Act, where he had been working under its control, therefore, is workman within the meaning of the Section 2 (S) of the Industrial Disputes Act. He has further alleged that he had been working in the first party organisation since 16.01.2010 as Safai Kamdar (Sweeper) attentively, diligently, honestly and also satisfactorily without any break and also on permanent basis. The post on which he was working was of a permanent nature. There were no complaints against him during the course of service. He used to do work of cleaning Latrines and Bathrooms and also sweeping of all the building of the office situated in the Head Post Office, Lal Tekri, Bhuj, Kutch. The first party institution is an institution established under law. Hence the provisions of Industrial Disputes Act and Rules 1957 were therein are applicable in the case. The first party without any reason or fault or any type of deficiency on the part of him terminated his services without following the legal procedure and principles of natural justice arbitrarily on 23.12.2011. He was not given any notice, notice pay or retrenchment compensation, thus the action was violative of the provisions of Section 25 (F) of the Industrial Disputes Act. At the time of retrenchment, the first party did not prepare the seniority list nor it was shown to him and was also not published on the notice board. He has further alleged that at the time of his termination of service, junior employees working with him or employed thereafter were either retained or permitted to continue who were still working with the first party. He has further alleged that the nature of the work which the applicant had been doing in the first party institution still exists. He has further alleged that another workman Sanjay Dhanjee Kabira was permitted to continue to work after retrenchment of the applicant. He has further alleged that at the time of his retrenchment, the first party did not get approval of retrenchment under Section 33 (2)(b) of the Industrial Disputes Act from a competent authority. He has further alleged that after his retrenchment, workload has increased and first party has also been increasing the employee every year but he has not been given the opportunity of re-employment. He issued a notice through his advocate on 11.07.2013 by registered post to the first party but to no result. Thus he is a person poor, cyclone and earthquake affected and is in dire need of employment. Therefore, he had prayed for reinstatement with back wages and consequential benefits since 23.12.2011, the date the notice was served on the first party.

2. The first party in his written statement Ext. 9 submitted that the facts mentioned in the statement of claim are not true and correct and they are false and fabricated. It is further alleged that the second party workman was engaged from 16.01.2010 to 23.12.2011 on a temporary vacant post. He was not given any letter of permanent post and such type of temporary cleaning employees can be relieved at any time. The Industrial Disputes is not applicable in the case of the first party organisation as per the judgement of Hon'ble Supreme Court in Civil Appeal Number 3385/86/1996. The second party workman was purely a temporary employee though his services were terminated with one month notice; therefore, after the expiry of notice period, the services were terminated on 23.12.2011. Later it is also submitted that the second party was not a permanent employee, therefore, no question of giving notice arises. He was working on a vacant post on daily wages basis; therefore, his name was not included in the seniority list. In his termination the principle of 'last cum and first go' was applied.

3. The averments made in the written statement Ext. 9 are confusing, ambiguous and vague because simultaneously two averments have been made that he was a daily wager, therefore, principle of giving one month notice does not apply, on the other hand, it has also been said he was given one month oral notice while at the time of termination, therefore, no violation of law was made. Thus these averments smell foul.

4. On basis of pleadings, following issues are required to be addressed which are as follows:

- i. Whether the action of the management of Department of Posts, Kachch Division, Bhuj in not giving the seniority on the basis of number of days worked by Shri Dinesh K. Gori and not offering him regular employment in the department is justified?
- ii. Whether the action of Department of Posts, Kachchh Division in termination the services of Shri Dinesh K. Gori w.e.f. 23.12.2011 without following due process of law is justified?

iii. To what relief the workman is entitled to?

5. The workman submitted his affidavit Ext. 11 in support of statement of claim and documents vide Ext. 6 which are not disputed and admitted by the first party advocate Exhibiting as Ext. 15 to 25 and the first party in support of the written statement for rebuttal submitted his affidavit Ext. 13 of one of his employee B. Patta Bi Raman.

6. All the aforesaid issues are inter-related and require finding together. The burden of proof was lying on the working Dinesh K. Gori who reiterated the averments made in the statement of claim. He was also cross-examined by the first party wherein he has stated on oath that he joined the service as Safai Karmachari on 16.01.2000 at the monthly emoluments of Rs.9500/-. He was asked not to come on duty on 23.12.2011 by the Post Master. No order of termination or removal from service was served on him. He was appointed by Postal Department. No notice was served on him. He is married and still jobless. No other question was asked by the first party; therefore, it can be assumed that the second party workman worked in the first party organisation for more than 240 days in the calendar years of 2010 and 2011. It can also be assumed that still the work which was this workman had been doing still exists and it can also be assumed that the workmen who were junior to this present second party workman or employed after the termination are still working.

7. In rebuttal, the first party examined B. Patta Bi Raman, Assistant Superintendent of Post Offices stated in his affidavit Ext. 13 that the first party organisation is not industry under the I.D. Act, therefore, the act is not applicable. The second party workman was not recruited through a proper procedure. He was purely a temporary sweeper. No temporary workman can be made permanent. His muster roll was not maintained. He was terminated with a proper procedure. In his cross-examination he stated that he is aware of the details of the case of the second party. Today he is giving statement on the basis of record. It is correct that the second party had been working since 16.01.2010. He was paid the wages on daily rated basis which generally amount to Rs.9000 plus-minus. It is correct that he was paid monthly not daily. The department First Party orally communicated to second party not to come from 23.10.2011 orally. No retrenchment notice was given to second party workman. It is true that no seniority list was prepared as he was not duly appointed. It is true that second party workman after expulsion gave an application for re-appointment. It was kept pending for disposal. It is true that second party workman worked for more than 240 days in every calendar year. Sweeping work is of permanent nature. It is true that after removal of this workman, Sanjay Dhanjee Kabira, Praveen Dhanjee Kabira have been doing work on daily rated basis at and when needed. They are junior to the workman second party.

We are not ready to employ any workman on monthly basis today.

8. From the perusal of evidences, oral and documentary of both the parties, it is an admitted fact that the second party workman Dinesh Krishan Gori had been employed as sweeper in the first party organisation as a daily wager since 16.01.2010 and his services were terminated on 23.12.2011 without giving him a notice or paying retrenchment compensation. It is also admitted fact that he worked for more than 240 days in the first party organisation for both the calendar years 2010 and 2011. It is also established that the worked the second party workman was doing was of a perennial or permanent nature. It has also not been denied by the first party witness in his written statement Ext.9 and affidavit Ext. 13 of the witness B. Patta Bi Raman that the other sweepers junior to this workman or engaged after termination of this workman has not been working. Thus in the light of the aforesaid discussions, the second party workman has fully proved that he is entitled for re-employment on the post on which he had been working. His termination was illegal and unjustified.

9. Thus the second party workman is fully entitled for re-employment on the post on which he was working at time of termination of his job. Thus the first party organisation is directed to reinstate on the questioned post on which he was working at the time of termination. He shall also be paid Rs.20000/- as compensation and Rs.5000/- as legal expenses.

10. The award is passed accordingly.

P.K. CHATURVEDI, Presiding Officer

नई दिल्ली, 6 मार्च, 2017

**का.आ. 713.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेक्रेट्री, सेंट्रल बोर्ड ऑफ दिल्ली एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नंबर-1, नई दिल्ली के पंचाट (संदर्भ संख्या 71/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 18.02.2017 को प्राप्त हुआ था।

[सं. एल-42011/157/2014-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक



New Delhi, the 6th March, 2017

**S.O. 713.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 71/2015) of the Central Government Industrial Tribunal-cum-Labour Court, No. 1, New Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the Secretary, Central Board of Education Delhi and their workman, which was received by the Central Government on 18.2.2017.

[No. L-42011/157/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

**ANNEXUR**

**IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI**

**ID No.71/2015**

The President,  
General Mazdoor Lal Jhanda Union, 13-A, Rouse Avenue,  
Vishnu Digamber Mart, ITO  
New Delhi -110 002

...Workman

**Versus**

The Secretary,  
Central Board of Secondary Education,  
Preet Vihar, Delhi -110 092

...Management

**AWARD**

A reference was received vide letter No.L-42011/157/2014-IR(DU) dated 04.02.2015 under clause (d) of sub-section (1) and sub-section 2A of Section 10 of the Industrial Disputes Act, 1947(in short the Act) for adjudication of the dispute by this Tribunal, terms of which are as under:

‘Whether deletion of name of the workman Shri Sushil Kumar from the seniority list maintained by the management of CBSE and his non-regularization of service on the basis of it is just, fair and legal? If not, what relief will be given to the workman and from which date?’

2. Both parties were put to notice and the claimant, Shri Sushil Kumar filed statement of claim, wherein it is alleged that that he has been working with the management of Central Board of Secondary Education (in short CBSE) since 15.05.1996 on the post of peon on daily wages basis. Claimant was registered with Directorate of Employment, Employment Exchange, Delhi Cantt and the employment exchange has sponsored the name of the claimant to the management. Management, through its selection process, selected and engaged the claimant with effect from 15.05.1996 as daily wage worker and the claimant was issued gate pass on 01.07.1996.

3. It is the case of the claimant that he has performed his duties sincerely diligently, with devotion & dedication. He has an unblemished and meritorious service record and never gave any occasion of complaint to the management.

4. It is also averred that in order to maintain transparency in the appointment of daily wagger, Hon’ble High Court of Delhi in WP(C) No.3248/1999 directed the management to prepare seniority list after inviting objections and displaying it on the notice board.

5. Pursuant to the above directions of High Court of Delhi, seniority list of workers was prepared and finalized on 02.03.2005 and the name of the claimant in the said list appears at serial No.567 . Work being performed by the claimant is perennial in nature and management was giving artificial break in service so that the claimant may not complete 240 days in a year. Claimant, through his union, protested against the artificial break and the union took up the cause of the workman with the management. A settlement was arrived at between the claimant union and management of CBSE on 29.11.2010. Salient feature of the settlement are that management will engage an employee on daily basis strictly as per seniority list and the names of daily wagers who do not report for duty for the previous three years, 2008, 2009 and 2010 shall be deleted. If the total number of attendance was less than 75% , such workmen would also lose their seniority. After sometime, management stopped sending call letters to the claimant and he approached the management in this regard. Management told the claimant that his name has been deleted from the seniority list since the year 2010. Deletion of the name of the claimant is without any notice and is alleged to be infringement of Article 14 of the Constitution of India. Finally, prayer has been made that deletion of the name of the

claimant be held to be unjust, unfair and illegal and the service of the claimant be regularized on the same post. Claimant be also paid back wages from the date of deletion of his name.

6. Despite service of notice, none appeared on behalf of the management since inception, i.e. on several dates of hearing, i.e. 26.05.2015, 29.07.2015, 10.09.2015 and 11.01.2016. Hence on 11.01.2016, management was proceeded ex-parte.

7. Claimant, in order to prove his case examined himself as WW1 and tendered in evidence documents Ex.WW1/1 to Ex.WW1/7. Claimant also examined Shri Pushpinder Singh as WW2, whose affidavit is Ex.WW2/A and he has tendered in evidence Ex,WW2/1 to Ex.WW2/4.

8. I have heard Shri Mohd. Nayeemuddin, A/R for the claimant. None appeared on behalf of the management to advance arguments on their behalf.

9. It is clear from statement of Shri Sushil Kumar WW1 that claimant was engaged by the management on daily wage basis on 15.05.1996 and he was also issued gate pass by the management on 01.07.1996. Name of the claimant was also sponsored by the Employment Exchange, which fact is established from the identity card Ex.WW1/1 issued by the Directorate of Employment. Identity card bears the name and address of the claimant, including his date of birth. Date of registration is 09.04.1996. There is also gate pass Ex.WW1/2 issued by CBSE, management herein and the same is valid from 01.07.1996 to 23.08.1996. This pass bears signature of Assistant Public Relations Officer, CBSE. There is seniority list Ex.WW1/3 and the name of the claimant appears at serial No.567 in the list. During the course of arguments, it was brought to the notice of this Tribunal that the above seniority list was prepared by the management when writ petition bearing No.3248 of 1999 was filed by the union of the claimant, General Mazdoor Lal Jhanda Union, in the Hon'ble High Court of Delhi. Pursuant to directions issued by the Hon'ble High Court, management of CBSE has prepared and finalized of seniority list of all daily wagers and peons as on 02.03.2005. Affidavit filed by the claimant is on similar lines as the averments contained in the statement of claim and the claimant has clearly averred that the duty/job which he was performing is of perennial nature. Since in the present case management has neither filed any reply to the statement of claim nor examined any witness so as to rebut the case of the claimant, as such, this Tribunal is left with no choice except to rely upon the evidence adduced by the claimant, which is also supported by documentary evidence. There is nothing on record to show that any show cause notice was served upon the claimant regarding his disengagement from the year 2010. The very purpose of preparation of seniority list was to engage workmen as per their seniority list Ex.WW1/3. There is no evidence on record to show that the claimant was not performing his duties satisfactorily, as a result of which any memo was issued to him or any notice was served on him so as to prove that he would not be engaged in future. In such a situation, this Tribunal is of the considered opinion that action of the management in disengaging the claimant is totally unjust, unfair and the same is not permissible under the law.

10. There is also memorandum of settlement Ex.WW1/4 which contains the terms of settlement and as per clause (ii) of this document, management has agreed that the name of daily wager employees who do not report for three years i.e. 2008, 2009 and 2010 shall be deleted. In the present case, there is nothing on record to show that during 2009, 2009 and 2010 claimant has not rendered service to the management. Claimant has also then approached the union, General Mazdoor Lal Jhanda Union, who has espoused the case of the claimant and thereafter referred the matter to the Assistant Labour Commissioner, as is evident from letter Ex.WW1/5. There is clear-cut mention in the above letter that management has not issued any call letter to the daily wager as per seniority list and name of the claimant has been removed from the seniority list in 2010. Thereafter, ALC has taken up the matter for conciliation and management has taken stand before the ALC that CBSE is not an 'industry' as defined under clause of the Act and is not covered under the Industrial Tribunal under the law. Claimant has also filed rejoinder before the ALC which is Ex.WW1/7 and due to failure of conciliation in view of the stand taken by the management, above reference was sent to this Tribunal for adjudication.

11. It is clear from the resume of evidence on record that services of the claimant has been disengaged since 2010 in an arbitrary and unfair manner by the management as no reason has been assigned for the disengagement of the claimant from the job, which he was doing since 1996.

12. Since the management has not filed any reply nor examined any witness so as to rebut the case of the claimant herein, as such this Tribunal is left with no choice except to rely upon the evidence adduced by the claimant, which is also supported by documentary evidence.

13. As a sequel to my aforesaid discussion, it is held that deletion of the name of the claimant, mentioned at serial No.567 in the list, from the seniority list maintained by the management of CBSE is held to be unjust, unfair and illegal. The claimant is liable to be considered for regularization of service from the date of deletion of his name from the seniority list by the management. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

A.C. DOGRA, Presiding Officer

Dated : 14.2.2017

नई दिल्ली, 6 मार्च, 2017

**का.आ. 714.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर अशोक होटल दिल्ली एवं उनके कर्मचारी, के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नंबर-1, नई दिल्ली के पंचाट (संदर्भ संख्या 12/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.02.2017 को प्राप्त हुआ था।

[सं. एल-42011/123/2014-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th March, 2017

**S.O. 714.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 12/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the Central Government Industrial Tribunal-cum-Labour Court No. 1, New Delhi and their workman, which was received by the Central Government on 14.2.2017.

[No. L-42011/123/2014-IR (DU)]

RAJENDRA JOSHI, Dy. Director

#### ANNEXURE

**IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, DELHI**

**ID No.12/2015**

Shri Ashok Kumar, S/o Shri Jai Singh, through  
Ashok Hotel Employees Union,  
R/o F-130 Dakshinपुरी,  
50-B, Chanakyapuri,  
New Delhi – 110 062

...Workman

#### Versus

The General Manager,  
Ashok Hotel, (Unit of ITDC)  
50-B, Chanakyapuri,  
Delhi -110 021

...Management

#### AWARD

Consequent upon receipt of reference from Central Government under Clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act), this Tribunal, vide letter No.L-42011/123/2014-IR(DU) dated 08.01.2015, is required to adjudicate the industrial dispute, terms of which are as under:

‘Whether non-placement of Shri Ashok Kumar, S/o Shri Jai Singh in the scale of Rs.1100-1555, i.e. in the grade of senior technician grade III with effect from the date of their appointment is just, fair and legal? If not what relief the workman concerned are entitled to?’

2. Both parties were put to notice and Shri Ashok Kumar (hereinafter referred to as the claimant) filed statement of claim with the averments that he is an employee of Ashok Hotel (in short the management) and was initially employed on daily wages as Pipe Fitter/Pump Operator and remained on the said post for 7-8 years. He was performing his duties satisfactorily. Services of the claimant was regularized on permanent basis by the management in the Maintenance Department on 01.09.1990 as provided by Wage Review Committee.

3. Since the claimant was a Technician, he should have been awarded pay scale of Rs.1100-1555 as Senior Technician since 01.09.1990 as provided by Wage Review Committee. However, workman was given pay scale of Rs.1050-1425.

4. It is the case of the claimant that his co-workmen namely Shri Om Prakash, Aditya Prasad, Amarjeet Singh, Duryodhan and others serving in the same department are drawing same salary have been granted time scale of Rs.1100-1555 from 01.09.1990. Claimant herein who was a party in the earlier case could not appear as he was suffering from mental problem. As such, union has dropped his name in the matter and the Tribunal has passed award in favour of the remaining co-workmen. Father of the claimant had also informed the management regarding his mental illness, as is clear from the medical receipts/treatment slips.
5. After his treatment, the claimant joined duties in May 1999 and is continuously performing his duties with the said department on the pay scale of Rs.1010-1425. Claimant herein has alleged that it is illegal and wrong. Finally prayer has been made for grant of the same in terms of reference.
6. Management has demurred the claim and took preliminary objections. On merits it was admitted that the claimant was an employee of the management. It is denied that the Wage Review Committee had given mandatory recommendations for grant of pay scale of Rs.1100-1555 as Senior Technician from 01.09.1990. Co-workers of the claimant, S/Shri Om Prakash, Aditya Prasad, Amarjeet Singh, Duryodhan and others had filed an industrial dispute before this Tribunal for grant of pay scale of Rs.1100-1555. However, union itself dropped the name of the claimant herein. Accordingly, the Tribunal had not passed any order in favour of the claimant herein for grant of pay scale of Rs.1100-1555. No appeal or review was filed by the claimant against the said award. It is, thus alleged by the management that the case of the claimant is barred by principles of res-judicata. Reference in this regard has been made to the judgement of the Hon'ble Supreme Court in the case of The Punjab Co-operative Bank Ltd. Vs. R.S., Bhatia (1975 (4) SCC 696) and Pondicherry Khadi & Village Industries Board vs. P Kulothangan (2004 (1) SCC 68), wherein it is held that once a question has been decided by competent court in their proceedings, same cannot be re-agitated in the subsequent proceedings. It was also held by this Tribunal vide order dated 26.08.2015 that no specific issue, except the one referred by the appropriate Government for adjudication in the manner stated above arises from the pleadings of the parties.
7. Claimant, in order to prove the case against the management examined himself as WW1, whose affidavit is Ex.WW1/A and also tendered in evidence documents Ex.WW1/1 to Ex.WW1/6. Thereafter the case was listed for evidence of the management, who was afforded several opportunities to adduce its evidence. Resultantly, evidence of the management was closed by order of the court on 19.12.2016. Thereafter, none appeared on behalf of the management.
8. The only question which requires determination in the case in hand is as to whether the claimant herein is entitled for the pay-scale of Rs.1100-1555 in the grade of Senior Technician Grade III.
9. It is neither in doubt nor in dispute that the claimant herein joined the management as a daily wagger pipe fitter/pump operator. Later on he was regularly appointed to the post of Technician Grade III in the pay scale of Rs.1050-1425, which is evident from Office order/document Ex.WW1/1. In this document, details of salary of the claimant have been given, alongwith conditions of service.
10. It is further clear from para 4 of the affidavit Ex.WW1/A filed by the claimant, that he being technician, should have been granted pay scale of Rs.1110-1555 as Senior Technician with effect from 01.09.01990. Claimant has also made reference to the earlier case filed by his co-workers wherein plea for grant of pay scale of Rs.1100-1555 with effect from 01.09.1990 was upheld by the Presiding Officer. During the course of arguments, learned A/R for the claimant specifically referred to the award passed in earlier case titled 'Management of Ashok Hotel Vs. Workmen' Ex.WW1/6 and it is clear from para 2 of the said award that the name of the claimant, Shri Ashok Kumar finds mention in the said award at serial No.8. Perusal of the award further shows that management in the earlier case also refuted the claim of the workman by alleging that they are not entitled for the pay scale of Rs.1100-1555. Learned Tribunal, in its award dated 13.08.2013, rejected contention of the management for non-grant of the pay scale of Rs.1100-1555 and awarded the same in favour of the workmen, except the claimant who has admittedly nor appeared before the Tribunal as he was suffering from mental illness, as a result of which the union of the claimant abandoned the case of the claimant herein. Management, in its written statement, has taken objection that in view of the fact that in the earlier industrial dispute between the parties, claimant herein has been granted pay scale of Rs.1100-1555, as such matter is covered by principles of res-judicata and the same cannot be open now in the subsequent proceedings between the same parties. I have also gone through the ration of the law relied by the management in the cases of Punjab Co-operative Bank Ltd. case(supra) and Pondicherry Khadi & Village Industries Board case (supra) There is hardly and dispute to the proposition of the law propounded in the above two cases. However, it is necessary to bear in mind that in the earlier award, there is no findings of the learned Presiding Officer to the effect that claimant herein has been denied the payscale of Rs.1100-1555 on merits. The said award clearly shows that the claimant herein has not filed his affidavit or appeared as witness so as to support the plea for grant of the above pay scale. For a pleading held to be barred by principle of resjudicata, it must be shown that the plea in question has not only been pleaded in the above case but it had been heard and finally decided the a court of competent jurisdiction. So far as decision in the previous industrial dispute adjudicated between the parties is concerned, rather it is in favour of the claimant herein to the extent that plea of the co-workmen who were performing similar duties in the same department with the claimant herein have been upheld by the Industrial Adjudicator. Question of resjudicata would have certainly been relevant if the plea of the

management regarding non-grant of pay-scale of Rs.1100-1555 being claimed by the workmen had been upheld by the Industrial Tribunal. The Tribunal also cannot ignore the fact that principles of resjudicata is not strictly applicable in industrial proceedings and that broad principles analogues of resjudicata do apply in such proceedings. There is considerable merit in the submissions of the A/R for the claimant that when similarly situated co-workmen have been granted a particular pay scale, i.e. 1100-1555, in that eventuality on the principles of equality and parity also, claimant is entitled for grant of such pay scale. There cannot be question of resjudicata purely on abstract question of law. This Tribunal, in its previous award, has categorically held that the workmen performing similar duties as that of the claimant herein are entitled to the pay scale of Rs.1100-1555. Since claimant in the present case could not attend the proceedings due to his illness, regarding documents Ex.WW1/2, Ex.WW1/4 and Ex.WW1/5 have been filed by the workman and it clearly shows that the workman was getting treatment from Safdarjung Hospital. Thus, non-appearance of the claimant even in the previous case was not intentional nor there is any specific findings to the effect that the claimant herein his not eligible for the pay scale of Rs.1100-1555. In such a situation, plea of the management regarding resjudicata is hereby rejected.

11. The Tribunal cannot ignore the vital fact that the claimant herein is performing similar duties which are being performed by his counterparts engaged by the management and thus, is entitled for equal pay on the principles of parity and equality also. Hon'ble Apex Court in the case of State of Uttar Pradesh Vs. Arvind Kumar Srivastava (2015) 1 SCC 317, while considering the question of delay and laches as well as question of extending benefits of a judgement to a party who has not approached the court earlier, observed as under:

'The moot question which requires determination is as to whether in the given case, is as to whether the approach of the Tribunal and the High Court was correct in extending the benefit of earlier judgment of the Tribunal, which had attained finality as it was affirmed till the Supreme Court. The legal principles that can be culled out from the judgements cited both by the appellants as well as the respondents can be summed up as under:

'The normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by the Supreme Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.'

12. Thus, it is clear from the above that even if a party had not approached the court in the earlier case, benefit of a judgement which has become final can be given to those workmen who are similarly situated. Thus, viewing the case of the claimant from this angle, he cannot be denied the relief.

13. As a sequel to my above aforesaid discussions, it is held that the claimant herein, Shri Ashok Kumar is entitled to the pay scale of Rs.1100-1555 in the grade of senior technician Grade III with effect from 01.09.0990. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

A.C. DOGRA, Presiding Officer

Dated : February 10, 2017

नई दिल्ली, 6 मार्च, 2017

**का.आ. 715.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कमिश्नर, म्युनिसिपल कारपोरेशन ऑफ दिल्ली एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नंबर-1, नई दिल्ली के पंचाट (संदर्भ संख्या 166/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.02.2017 को प्राप्त हुआ था।

[सं. एल-42012/46/2012-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 6th March, 2017

**S.O. 715.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 166/2012) of the Central Government Industrial Tribunal-cum-Labour Court, No. 1, New Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the Commissioner, Municipal Corporation of Delhi and their workman, which was received by the Central Government on 14.2.2017.

[No. L-42012/46/2012-IR (DU)]  
RAJENDRA JOSHI, Dy. Director

**ANNEXURE****IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No.1, KARKARDOOMA COURT COMPLEX, DELHI****I.D. NO. 166/2012**

Sh. Anil Kumar & 05 others,  
Through MCD General Mazdoor Union,  
Room No.95, Barracks No.1/10, Jam Nagar House,  
Shahjahan Road, New Delhi

...Workmen

**Versus**

The Commissioner,  
Municipal Corporation of Delhi,  
Town Hall, Chandni Chowk,  
Delhi-110006

...Management

**AWARD**

This is a reference received from Government of India under clause(d) of sub-section(I) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) for adjudication of an industrial dispute vide letter No. L-42012/46/2012-IR(DU) dated 09.11.2012, to answer the following:-

“ Whether the action of the management of Municipal Corporation of Delhi (MCD) in not regularizing the services of (1) Sh. Anil Kumar S/o Sh. Ram Kishan(II) Hukum Chand S/o Sh. Faqueer Chand (III) Heera Lal, S/o Sh. Shohan Lal as ‘Mali’ w.ef. 01.04.05 and that of (IV) Sh. Pankaj Sharma, S/o Sh. Jaswant Sharma, (V) Anil S/o Sh.Govinda and (VI) Manoj Kumar, S/o Sh. Bhupender Dev w.e.f. 01.04.2006 as ‘ Mali’ is justified or not ? If not what relief the Workmen are entitled to and from which date?”

2. Briefly the details of the claimants are as under:-

Name (S/Sh)	Father's Name (S/Sh)	Date of Initial Employment On muster Roll	Posted at Horticulture Div.	Date of Termination
Anil Kumar	Ram Kishan	26.01.2000	Central Zone	11-01-04
Pankaj Sharma	Jaswant Sharma	26.10.2002	Central Zone	25-12-03
Anil	Govinda	25.10.2002	Central Zone	26-12-03
Manoj Kumar Sharma	Bhupender Dev	25.10.2002	Central Zone	26-12-03
Hukam Chand	Faqet Chand	26-01-2000	West Zone	11-01-04
Heera Lal	Sohan Lal	26-01-2000	Horticulture Shahdara North Zone	11-01-04

3. It is averred that S/Sh. Anil Kumar, Pankaj Sharma, Manoj Kumar Sharma and Hukam Chand are working under Central Zone of Horticulture and Sh. Hukam Chand is posted under West Zone. Similarly Sh. Hira Lal is working under Central Zone of Horticulture and he expired on 30-08-2011 during the employment . He left behind his wife Smt.Kamlesh, 30 years, baby Vaishali 10 years and Master Manoj 6 years and all are dependent on late Heera Lal. The claimants are performing duties continuously and without any break. Previously workmen were reinstated without back wages by the Labour Court and the award was affirmed by the High Court. The LPA filed by the management was also dismissed.

4. As per the policy, the management is regularizing the services of daily rated workers on muster roll in a phased manner, as per the Office Order No. ADC(Hort)/AO (Hort)/DA-IV/2007/794 dated 9.1.2001 the workers. Similarly, as per Office Order No. ADC(Hort)/AO (Hort)/DA/ 06/1302 dated 29-3-2006 the daily rated workers who were

engaged w.e.f. 1-4-1998 to 31-03-2000 are regularized w.e.f. 1-4-2005. Similarly, as per office order No. ADC (Hort)/AO (Hort)/DA/06/1302 dated 29-03-2006 the daily rated workers who were engaged w.e.f. 01/04/1998 to 31/3/2000 are regularized w.e.f 1-4-2005. That as per the above policy the following workmen were regularized in the time scale retrospectively from the dates given as under:-

S. No.	Name (S/Sh)	Date of regularization
1.	Anil Kumar	01-04-2005
2.	Hukam Chand	01-04-2005
3.	Heera Lal	01-04-2005
4.	Pankaj Sharma	01-04-2006
5.	Anil	01-04-2006
6.	Manoj Kumar Sharma	01-04-2006

5. The Management has challenged the award of reinstatement of the Tribunal before the Hon'ble High Court and after dismissal of Writ Petition as well as LPA the claimants were taken back on jobs.

6. All the workmen have been performing the work of regular Mali but management did not regularize their services. Finally, a prayer has been made for regularization of services of the workmen with all consequential benefits.

7. The claim was contested by the management who filed written statement thereto by taking preliminary objection of non service of demand notice/espousal etc. The management admitted the factum of employment of workman and alleged that Sh. Pankaj Sharma has been disengaged on 9.4.2012 . It is also denied that the workmen are entitled to get the wages from the date of termination till the actual reinstatement. The workmen were not entitled for back wages and after the reinstatement, they have drawn excessive salary amount. The management denied other averments contained in statement of claim.

8. Separate written statement filed on behalf of Management No.2 which is almost on similar lines as that filed by management No.1.

9. The Tribunal, on the basis of the pleadings, of the parties framed the following issues:-

- (1) Whether the dispute has not acquired status of industrial dispute for want of espousal by the union or considerable number of workmen in the establishment of the management ?
- (2) Whether dispute is bad since no notice of demand was served on the management ?
- (3) Whether Shri Pankaj Sharma cannot claim relief of regularization since his services have already been disengaged ?
- (4) Whether relief of regularization cannot be claimed on behalf of Shri Heera Lal, since he had expired On 30.8.2011 ?
- (5) As in terms of reference ?

10. The claimants, in order to prove the cause against the management, examined Sh. B.K.Prasad,

President , General Mazdoor Union as WW1 whose affidavit is Ex.WW1/A. He also tendered in evidence documents Ex. WW1/1 to Ex. WW1/13. The claimant also examined Smt. Kamlesh as WW2 who tendered her affidavit Ex. WW2/A. Similarly Sh.Anil Kumar was examined as WW3 who tendered in evidence his affidavit Ex.WW3/A and affidavit of Sh.Anil was examined Ex/WW4 who tendered in evidence his affidavit as Ex.WW4/A and Sh. Manoj Kumar Sharma was examined as WW5 whose affidavit Ex.WW5/A Similarly Sh.Hukum Chand was examined as WW6 and tendered his affidavit as WW6/A. The management, in order to rebut the case of the workman, examined Sh. Narpal Singh, Assistant Director, Horticulture, EDMC, Shahdara (North) as MW1. And tendered his affidavit as MW1/A. And Sh. Banwari Lal , Administrative Officer, Horticulture Department (HQ), SDMC, ND was examined as Ex. MW2 and tendered his affidavit MW2/A respectfully. They have tendered some documents.

#### issues No. 1 &2

11. Both these issues are being taken together for the purpose of discussion as they are inter-related and can be conveniently disposed of. It was submitted on behalf of the management that there is no espousal in the present case and no notice of demand was served on the management. As such the claim filed by the claimants is not legally maintainable.

12. Per contra Sh. B.K. Prasad contested on behalf of the claimants that the matter was raised in the Union actually espoused by the Members of the Union. And in this regard Sh. B.K.Prasad referred to the statement of claim as well as his affidavit Ex. WW1/A. He has clearly stated in his cross-examination. Claimant moved a written complaint and configuration was taken by the Union. It was further clarified by him the copy of the complaint was not

filed in this Tribunal. He has also made reference to certificate Ex. WW1/1 which shows that MCD General Mazdoor Union is duly registered under the Trade Union Act. Ex. WW1/2 is the copy of the letter sent by the management to the union which was called for negotiation and correspondence to MCD. General Mazdoor Union. There is no evidence to the contrary adduced by the management so as to show that Union of the claimant headed by Sh. B. K. Prasad, WW1 is not duly registered and the matter was not discussed in the meeting of the Claimant/Union. It has been held in the case of the workmen of MCD Vs MCD (Writ Petition © No. 13023/2005) decided on 06/08/2007 by the Hon'ble High Court of Delhi wherein a similar contention, was raised that matter was not raised by the workmen by raising any demand through the Union nor any notice was served upon the management. After placing reliance upon the case of Shambhu Nath Goyal Vs Bank of Baroda, Jullundur reported as (1978) 2 SCR 793, wherein the Supreme Court after referring to Section 2(K) of the Industrial Dispute Act, 1947 which defines "Industrial Dispute", held as Under:-

“ A bare perusal of the definition would show that where there is a dispute or difference between the parties contemplated by the definition and the dispute Or difference is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person there comes into existence an industrial dispute. **The act nowhere contemplates that the dispute would come into existence in any particular, specific or prescribed manner. For coming into-existence of an industrial dispute a written demand is not a sine qua non, unless of course in the case of public utility service, because Section 2 forbids going on strike without giving a strike, notice.** The key words in the definition of industrial dispute are 'dispute' or 'difference'. What is the connotation of these two words. In *Beetham v. Trinidad Cement Ltd.* (1960) 1 All E.R. 244 at 249. Lord Denning while examining the definition of expression Trade disputes' in Section of Trade Disputes ( Arbitration and Inquiry)

Ordinance of Tribunal observed:

“by definition a 'trade dispute' exists whenever a 'difference exists and a difference can exist long before the parties become locked in a combat. It is not necessary that they should have come to blows. It is sufficient that they should be sparring for an opening.”

Thus the term 'industrial dispute' connotes a real and substantial difference having some element of persistency and continuity till resolved and likely if not adjusted to endanger the industrial peace of the undertaking or the community. When parties at variance and the dispute or difference is connected with the employment, or non-employment or the terms of employment or with the conditions of Labour there comes into existence an industrial dispute. To read into definition the requirement of written demand for bringing into existence an industrial dispute would tantamount to re-writing the section.

13. Keeping in view the aforementioned judgment, which clearly notes that there is no specific requirement in the I.D. Act that a dispute has to be raised only by making a demand in writing. Any other Interpretation given to Section 2(k) of the I.D. Act which narrows the definition of the term, "industrial dispute" is not permissible. Thus, it cannot be held that merely because a demand was not given in writing by the petitioners to the respondent management, there does not exist any industrial dispute between the parties. Making a written demand is not a sine qua non for raising an industrial dispute. Once the appropriate Government passed an administrative order referring an industrial dispute for adjudication to the industrial adjudicator, it has to be assumed that an administrative decision was arrived at by the Government after examining the material placed on the record that there exists an industrial dispute. Learned counsel for the respondent has no quarrel with the aforesaid position of law.

14. It is, thus, clear that the claimant has to simply raise a demand to the Union so that Union could take up the matter with the management for negotiation and conciliation. Thus, the contention of the management that matter was not espoused through the union is meritless and statement of Sh. B. K. Prasad, WW1 is sufficient to meet the legal requirement of raising a dispute/demand notice and its espousal by the union. The expression " espousal" has not been defined under the Act. However from pronouncement made by the courts, it is clear that it means that disputes of the workmen, is adopted by the union as its own dispute and considerable number of workmen support the same. The expression "Union" as used in Section 2(k) of the Act merely indicate the Union to which the workman belongs even though it may be union of the minority of workmen. The Espousal/Sponsorship certificate WW1/15 shows that MCD General Mazdoor Union in its meeting held on 1-12-2010 decided to espouse/sponsor the cause of S/Sh. Anil Kumar S/o Sh. Ram Kishan, Hukam Chand S/o Sh. Faqeer Chand, Heera S/o Sh. Sohan Lal w.e.f. 01-04-2005 and Pankaj Sharma S/o Sh. Jaswant Sharma, Manoj Kumar Sharma S/o Sh. Bhupender Dev, Anil S/o Sh. Govinda w.e.f. 1-4-2006 for grant of regularization. Since the evidence adduced by the workmen regarding their raising demand and espousal through the union appears to be inspiring and credible, as such, both these issues are decided in favour of workman and against the management.



**Issue No.3, 4 & 5**

15. All these issues are taken together for the purpose of discussion. During the course of arguments the Ld. A/R appearing on behalf of the claimant made reference to Para 2 of the statement of claim, containing detailed of each claimant regarding their initial appointment on muster roll are mentioned. In Para-2 of the written statement, management has not specifically denied the factum of their engagement, as it is a matter of record. It is rather specifically admitted by the management that Sh. Anil Kumar, Sh. Anil & Sh. Manoj Kumar Sharma are working in the Central Zone of the management No.1/SDMC and Sh. Hukam Chand is working in the West Zone of the Management No.1/SDMC after their reinstatement. However Sh.Pankaj Sharma has already been disengaged vide order No. DDH/ADH/CNZ/2011-12/22 dated 09.04.2012, as he was remaining absent since 01.08.2011.

16. During the course of arguments, the Ld. A/R for the claimants invited the attention of the Tribunal to the failure report i.e. Ex. WW1/3 which clearly shows that there is mention of the names of all the claimants in the said report and their dates of initial employment on muster roll and termination are in consonance with Para-2 of the Statement of Claim as well as Para-3 of the Affidavit, which is exhibited as Ex. WW1/A. The Management has not disputed the recital of dates contained in the said report. The Office Order Ex.WW1/4 clearly shows that award passed by the Labour Court was implemented by reinstatement of the claimants herein on 18/06/2010. There is another office order Ex. WW1/5 which shows that Sh.Hukam Chand, Daily Wager Mali/Beldar was reinstated with immediate effect vide Office Order No. ADC/AO(Hort)/ HQ/DA-IX/2009/1910 on 23/10/2009. Similarly, Sh.Heera Lal S/o Sh. Sohan Lal , daily wager Mali/Beldar was reinstated with immediate effect in view of the award dated 18-10-2007.

17. Office Order No.ADC(Hort)/AO(Hort)/DA-IV/2007/794 dated 09/01/2007 Ex.WW1/10 is the list of the workmen whose services were regularized w.e.f. 1-4-2006 with the approval of worthy Commissioner, MCD in respect of workmen working in the post of Mali in the pay scale of Rs.2550-3200. Similarly Office Orders dated 29/03/2006 which are exhibited as Ex. WW1/11, Ex. WW1/12, Ex. WW1/13 show the list of workmen whose services were regularized after approval of Addl.Cm(Engg), MCD, Delhi.

18. That MCD General Mazdoor Union's letter addressed to Commissioner, MCD, Delhi of October 11,2010 Exhibit WW1/14 clearly shows that request was made by Sh.B.K.Prasad to the management for regularization of S/Sh. Anil Kumar, Pankaj Sharma, Anil, Manoj Kumar Sharma and Hukam Chand as per policy of the management with retrospective dates i.e. 01-04-2005 of Sh Anil Kumar and 01-04-2006 of S/Sh.Pankaj Shama, Anil, Manoj Kumar Sharma & Hukam Chand.

19. The Ld. A/R for the claimant had also invited the attention of this court to the statement of Witnesses of the management , particularly Sh. Banwari Lal, Ex.MW2. He has stated that he is presently, Administrative Officer, Horticulture Department (HQ), SDMC. He has further admitted in his cross-examination that Sh Anil Kumar, Hukam Chand and Heera Lal are, all entitled for regularization w.e.f 1/4/2005 and Sh. Pankaj Sharma, Anil Kumar, Manoj Kumar Sharma are liable to be regularized from 01/04/2006 and their cases of regularization were pending in the court.

20. It is clear from the evidence on record as well as admission of Sh. Banwari Lal, MW2, Administrative Officer, Horticulture Department (HQ), SDMC, ND in his cross-examination that claimants were liable to be regularized w.e.f. 01.04.2005 and 01.04.2006. Sh. Banwari Lal MW2 has also clarified that because of pendency of the case, the services of the workmen could not be regularized, Accordingly, it is held that services of the claimants as per policy of regularization, discussed above is liable to be regularized from the dates mentioned in the reference.

21. Admittedly, Shri Heera Lal expired on 30/08/2011 and this fact was not disputed by either of the parties. Since service of Sh. Heera Lal is liable to be regularized w.e.f. 1-4-2005, as such his legal heirs are entitled for all monetary benefits.

22. So far as case of claimant, Sh. Heera Lal, deceased is concerned, Smt.Kamlesh, widow of Late Sh.Heera Lal entered into the witness box and supported the case on behalf of her husband. She has been given employment on compassionate grounds on muster roll by the management. The law is fairly settled that if a workman dies during the pendency of proceedings or he is found entitled to monetary benefits in an award/Judgment passed by the Competent Court after his death, in that eventually, the benefit of such an award or judgment is granted to the legal heirs of the deceased workman who are representing the estate of deceased workman. Accordingly, it is held that Smt. Kamlesh is entitled to all the benefits which accrued to her husband till the date of his death i.e. 30.08.2011.

23. So far as claim of Sh.Pankaj Sharma is concerned, he has not entered into the witness box to support averments contained in the statement of claim. His services was terminated by the management on account of his unauthorized absence vide Ex. MW2/1 dated 09.04.2012. It was urged on behalf of the claimant that monetary benefits can be given to this workman also till the date of his termination i.e.dated 09/04/2012, Ex.MW2/1. There is no merit in the contention of the claimant in as much as the case of Pankaj Sharma is no way different from the other claimants.

In this regard, reference can be made to the case of State of Uttar Pradesh and others Vs Arvind Kumar Srivastava and others, (2015 SCC it is held as under:-

“The normal rule is that when a particular set of employees is given relief by the court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by the Supreme Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the court earlier, They are not to be treated differently.

24. It is clear from the above passage that benefit of judgment/Award can be extended to all the similarly situated person though they were not party to the case. In the present case Sh.Pankaj Sharma is directly party to the present case though he has not entered into the witness box to support his case. Merely non-appearance of a party in a case would not be fatal unless examination of such a party was essential to unfold the controversy or prove a particular fact. Resultantly, it is held that claimant Sh.Pankaj Sharma is entitled to the monetary benefits till the date of his termination or disengagement. Issue No.3 is decided accordingly.

25. As a sequel to my aforesaid discussion, it is held that service of claimants S/Sh. Anil Kumar, Hukam Chand and Heera Lal is liable to be regularized w.e.f 1/4/2005 and that of claimant Sh.Anil Kumar and Sh. Manoj Kumar w.e.f 1/4/2006 as Mali with all consequential benefits which has been given to similar workmen. It is also held that claimant Sh.Pankaj Sharma would be entitled to monetary benefit until his disengagement. Smt. Kamlesh, Widow of Sh.Heera Lal is held entitled to monetary benefits which had accrued in favors of her husband namely Sh.Heera Lal till the date of his death i.e. 30/08/2011. An award is accordingly passed. It be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

13/02/2017

A.C. DOGRA, Presiding Officer

नई दिल्ली, 7 मार्च, 2017

**का.आ. 716.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कमिश्नर, म्युनिसिपल कारपोरेशन ऑफ दिल्ली एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नंबर-1, नई दिल्ली के पंचाट (संदर्भ संख्या 191/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.01.2017 को प्राप्त हुआ था।

[सं. एल-42011/71/2012-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 7th March, 2017

**S.O. 716.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 191/2012) of the Central Government Industrial Tribunal-cum-Labour Court, No. 1 New Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the Commissioner, Municipal Corporation of Delhi and their workman, which was received by the Central Government on 16.1.2017.

[No. L-42011/71/2012-IR (DU)]

RAJENDRA JOSHI, Dy. Director

#### ANNEXURE

**IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI**

**ID No.191/2012**

The General Secretary,  
Delhi Municipal Karamchari Ekta Union,  
780, Balli Maran, Chandni Chowk,  
Delhi-110 006

...Workman

**Versus**

The Commissioner,  
Municipal Corporation of Delhi,  
Town Hall, Chandni Chowk,  
Delhi-110 006

...Management

**AWARD**

A reference was received from Government of India, Ministry of Labour under sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 for adjudication of a dispute, vide letter No.L-42011/71/2012-IR(DU) dated 05.12.2012, the terms of which are as under:

‘Whether the action of the management of MCD in not deciding the quantum of special allowance to the workmen employed in Sanitary Landfill and Compost Plants is legal and justified in terms of the award dated 23.05.2008 in ID No.142/2005.? If not, what is the quantum of relief/allowance the said workers are entitled to and from which date?’

2. It is averred in the statement of claim that the claimants are workmen of Municipal Corporation of Delhi (in short the management) and worked at various sanitary landfill sites and compost plants of the management. Workmen at the various compost plants of the management have become unsafe, dangerous, unhealthy and risky. On account of waste and garbage like slaughter house, hospital waste, nala and sewer slits etc. , the entire atmosphere is unhealthy and unbearable. Even poisonous gases like methane are emanated from the said plants. There is likelihood of workmen catching diseases like asthma, bronchitis, TB and other lung diseases. The workmen are not provided any medical facilities and have to work in most adverse and unhygienic conditions. Workmen are not even given uniforms. Workmen are being paid meager amount of Rs.690.00 as special allowance, which has now been revised to Rs.1200.00. Supervisory staff of malaria department has also been granted special allowance of Rs.1200.00 Other municipalities are providing much better facilities to its employees. Even New Delhi Municipal Corporation has granted the Shiv Shankaran Committee’s pay scale to its employees working at the compost plant and doing similar nature of work.

3. Union served demand notice on 16.09.2004 demanding special allowance etc. The claimants raised an industrial dispute which was referred for adjudication vide letter 14.12.2005 to the Ld. Industrial Tribunal No.1 with the following terms of reference:

‘Whether the workmen working at the Sanitary Landfill and Compost plant are entitled to special (filth and garbage contract allowance) and if so, to what extent and what relief entitled and what directions are necessary in this respect?’

4. The Ld. Industrial Tribunal No.1, Delhi vide award dated 23.05.2008 held that the workmen working in Sanitary Landfill sites and compost plants are working in most adverse, tough and unhygienic conditions and the demand of the workers is genuine that the workmen employed in hospitals are getting patient care allowance. The Tribunal also ordered the management to constitute a committee to determine grant of allowance. Despite serving upon the management, grant of allowance has not been decided, hence the present claim.

5. Claim was resisted by the management, who took preliminary objections. On merits, engagement of the claimants herein has been admitted. It is also admitted that the workmen herein are working at various compost plants. It is denied that only a few workmen have reached the age of retirement. It is also denied that precautionary measures are not being taken by the management. Management has taken steps providing proper filth and garbage allowance to the workmen deployed at SLF site in East Delhi Municipal Corporation. Management has denied the other averments contained in the statement of claim.

6. Against this factual background, this Tribunal vide order May 6, 2016, framed the following issues:

- (i) Whether the reference is not legally maintainable in view of the preliminary objections?
- (ii) As in terms of reference
- (iii) Relief

7. Thereafter, the case was listed for evidence of the claimant. However, none appeared on behalf of the claimant on 16.09.2016, 18.11.2016 and 06.01.2017, which clearly shows that the claimant is not interested in adjudication of the case on merits. Averments made in the claim are not proved by the claimant, as required under the law ,by adducing evidence. As such, this Tribunal is left with no other choice but to pass a ‘No Claim’ award. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

A.C. DOGRA, Presiding Officer

Dated :January 11, 2017

नई दिल्ली, 7 मार्च, 2017

**का.आ. 717.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कमिश्नर, म्युनिसिपल कारपोरेशन ऑफ दिल्ली एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नंबर-1, नई दिल्ली के पंचाट (संदर्भ संख्या 02/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 16.01.2017 को प्राप्त हुआ था।

[सं. एल-42011/160/2011-आईआर (डीयू)]

राजेंद्र जोशी, उप निदेशक

New Delhi, the 7th March, 2017

**S.O. 717.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 02/2012) of the Central Government Industrial Tribunal-cum-Labour Court, No. 1, New Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the Commissioner, Municipal Corporation of Delhi and their workman, which was received by the Central Government on 16.1.2017.

[No. L-42011/160/2011-IR (DU)]

RAJENDRA JOSHI, Dy. Director

#### ANNEXURE

**BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1: ROOM NO.38-A(GF) KARKARDOOMA COURT COMPLEX, SHAHDRA, DELHI**

**ID NO. 02/2012**

Pratap Singh  
C/o Municipal Employees Union  
Agarwal Bhawan, G.T. Road,  
Tis Hazari, Delhi,  
Delhi – 110054

...Workman

**Vs.**

The Commissioner,  
Municipal Corporation of Delhi  
Town Hall, Chandni Chowk,  
Delhi – 110006

...Management

#### AWARD

A reference was received from the Government of India, Ministry of Labour Vide order No. L-42011/160/2011-IR(DU) dated 20.12.2011 under clause D of Sub Section 1 & Sub Section 2 A of the Section 10 of the Industrial dispute of Act. (In short the Act) For adjudication of the industrial dispute the terms of which are as under:

“Whether the action of the management of Municipal Corporation of Delhi (MCD) in denying the regularization of services of the workman (i) Sh. Pratap Singh s/o Sh. Surat Ram, (ii) Sh. Ramayan Mehto S/o Sh. Ram Devi Mehto and (iii) Sh. Kirpal Singh S/o Sh. Jahangir Singh as Offset Machine-men w.e.f. the date they are working i.e. 12/07/1993, 26/10/1993 and 28/12/2000 respectively in the pay scale of Rs. 4500-7000 and non grant of promotion to the workman (iv) Sh. Pran Nath S/o Sh. Shiv Nath w.e.f. 29/12/2000 on the post of offset machine assistant in the pay scale of Rs. 4000-6000 is justified or not? What relief will be given to the workmen and from which date?”

2. The present claim has been filed on behalf of 4 workmen whose service particulars are as under:

Sl No.	Name and Father's Name	Initial designation	Present designation	Date of apptt.	Date of Tfr. From Town Hall to Civil Line	Date of Promotion
1.	Shri Pratap Singh S/o Shri Surat Ram	Ink Man	Offset Machine-Man	18.11.80	12.07.93	01.03.2005
2.	Shri Ramayan Mehto S/o Shri Ram Devi Mehto	Ink Man	Offset Machine-Man	11.03.88	26.10.93	April, 2010
3.	Shri Kirpal Singh S/o Shri Jahangir Singh	Ink Man	Machine Man Letter Press	09.03.88	Nov. 2003	28.12.99
4.	Shri Pran Nath S/o Shri Shiv Nath Singh	Ink Man	Ink Man	18.12.98	Dec 2003	29.12.2000

3. It is alleged that workmen joined the employment of MCD as Ink Man at MCD Press as regular employees later on the workmen were transferred to Civil Line. They have unblemished and uninterrupted record of service. The workmen namely Sh. Pratap Singh, Sh. Ramayan Mehto and Sh. Kirpal Singh were promoted letter Press Machine Man in the pay scale of 4000-100-6000 vide order dated 10.11.1998. Since then they were working as offset Machine Man since the time of their transfer from Town Hall to Civil Line Zone. It is the case of workmen that Sh. Pran Nath has been working as an assistant offset Machine Man w.e.f. 29.12.2000 but till date he has been shown working as Ink man and drawing salary of 3500-4590. Although, he is entitled for the pay scale of 4000-6000. Their aforesaid workmen namely Sh. Pratap Singh, Sh. Ramayan Mehto and Sh. Kirpal Singh were given pay scale of 4500-6000 although, they were entitled to the pay scale of 4500-7000 as is evident from the letter dated 28.12.2004.

4. Further, non-regularization of services of the workmen aforesaid namely Shri Pratap Singh and Ramayan Mehto and Kripal Singh on the post of Offset Machine men w.e.f. the date from which they are working as Offset machine men i.e. 12/07/1993, 26/10/1993 and 28/12/2000 respectively in proper pay scale of Rs.4500-7000 and allowances and denial of proper salary at par with their counterparts on the principle of "Equal Pay for Equal Work" with all arrears thereof and non-grant of promotion to the workman Shri Pran Nath w.e.f. 29/12/2000 on the post of Assistant Offset Machine man in proper pay scale of Rs. 4000-6000 are wholly illegal, bad, unjust and malafide and amounting to unfair labour practice.

5. The reference was contested by the management who filed written statement and took preliminary actions on merits, the management denied the material averments contained on the W.S. and the management has also denied the dates of appointment of the workmen Sh. Pratap Singh.

6. Against the factual background, my Ld. Predecessor vide dated order 20.03.2012 observed that no specific issue is required to be framed on the basis of pleadings of the parties.

7. The workmen in order to prove the case examined Shri Pratap Singh as WW1 who also tendered documents Ex. WW1/1 to WW1/12 in support of his case. Shri Ramayan Mehto was examined as WW2, Shri Kripal Singh was examined as WW3, Shri Pran Nath was examined as WW4, Shri Surender Bhardwaj was examined as WW5 and Shri Sohan Lal was examined as WW6 who have tendered the respective affidavit WW2/1 to WW2/6.

8. The management has not produced any evidence as defence of the management, was struck off by this tribunal vide order dated 17 July, 2015. It is also necessary to mention here. Management was directed to produce documents in possession of the management. Even Shri Jagdish Kumar Assistant Manager took time for the production of the documents mentioned in the application but those documents were not produce despite several opportunities.

9. I have heard Shri Abhinav Kumar A/R for the claimants and ShriVishwajit Mangla, A/R for the management.

10. Admittedly, in the present case the workmen are employees of the MCD. And this fact is also be admitted by the management in written statement. The initial date of joining as Ink-men by the workmen is also admitted. In Para 3 of the written statement a brief history regarding the employment of workmen has been given and it stands admitted that workmen were granted up gradation in their pay scale on completion of 5 year service. Shri Pran Nath workman is

the junior most with insufficient regular service and due to non-availability of vacancy could not be granted next promotion so far. His case would be duly considered, as and when vacancy occurs.

11. Affidavit filed by all the claimants, namely Sh. Pratap Singh WW1/A, Sh. Ramayan Mahto WW2/A, Sh. Kripal Singh WW3/A and Sh. Pran Nath WW4/A are in consonance with the statement of claim. It is clearly stated by all the claimants in their statement that initially no letter press machine was installed in Civil Line Zone and only offset machine was functioning when the services of claimants were transferred to Civil Line Zone. Further, the claimants have been treated in a hostile manner as junior to have been regularized/Promoted in service in proper pay scale, but the claim of claimants hearing have been completely ignored.

12. It is also deposed by Sh. Surender Bhardwaj WW5 that claimants were not given proper pay scale 4500-7000 well in time at par with their counterparts. It is also clearly stated by Sh. Sohan Lal WW6 that offset machine were installed in MCD in 1989 and claimants herein, were working on the offset machine since their date of transfer to civil line. They were also given necessary in-house training and at present were working offset Machine Men. There is no suggestion to any of the claimants that they were not working on the offset machine since the date and time mentioned in the statement of claim and their affidavits.

13. It is pertinent to mention here that an application was filed by the claimants for production of documents and same was allowed by this tribunal vide-order dated 10/03/2015. In fact, the claimants have sought in the application production of material documents i.e, Outan register for the year 1989 till date along with other documents. The production of these documents was necessary to show the nature of work being performed by the claimants and their posting/ duties time to time. Admittedly, these documents were in possession of the management who has not produced the same despite the assurance given by Sh. Jagdish Kumar, Assistant Manager. Resultantly, this tribunal is bound to draw adverse inference against the management.

14. During the course of argument, reliance was also placed upon the case of Sh. Rajendra Singh Vs. UOI(2015)1LLJ389Del. Wherein, Hon'ble High Court of Delhi was dealing with the case of termination and regularization of service of the daily wages. It was held that an employee can not be kept temporary throughout his life if the nature of job is perennial. The employer has power to relax the educational qualification. In the said case the claimants was working as temporary worker for more than 30 years since 03/04/1984. The contention of the management that tribunal can not order regularization of service in view of judgment in Apex Court Smt. Uma Devi case was rejected by the Hon'ble High Court by holding as under:

“13. To strengthen his arguments, id. Counsel has relied upon a case of Maharashtra State Road Transport Corporation and Anr. V. Casteribe Rajya P.Karmachari Sanghatana (2009) 8 SCC 556 wherein the Hon'ble Supreme Court held that Uma Devi's case is an authoritative pronouncement for the proposition that the Supreme Court under Article 32 and High Court under Article 226 of the Constitution of India should not issue directions of absorption, regularization or permanent continuance of temporary, contractual, casual, daily wage or adhoc employees. The judgment does not denude the Industrial and Labour Courts of their statutory power to order permanency of workers, who have been victim of unfair labor practice of the part of the employer.

14. The Hon'ble Supreme Court further held that the Uma Devi's case cannot be held to have overridden the powers of Industrial and Labour Courts in passing appropriate order once unfair labour practice on the part of the employer is established.

15. Id. Counsel has further relied upon a case of State of Karnataka and Ors. V. M.L.Kesari and Ors. AIR 2010 SC 2587, wherein, the Apex Court held as under:

“Uma Devi casts a duty upon the concerned Government or instrumentality, to take steps to regularize the services of those irregularly appointed employees who had served for more than ten years without the benefit or protection of any interim orders of courts or tribunals, as a one-time measure. Uma Devi, directed that such one-time measure must be set in motion within six months from the date of its decision.”

15. It is thus clear from the above that denial of regularization to some claimants whereas others equally placed or similarly situated are given the such benefits amounts to unfair labour practice under the law.

16. Tribunal can not ignore the fact that no evidence has been adduced by the management. It is clear from the office order WW1/5 that claimants Sh. Pratap Singh was given the pay scale of 4500-7000 /- from 01/03/2005, consequent upon the creation of 6 posts of offset machine man on adhoc basis. Office order dt 10/11/1998 Ex. WW1/6 also show that claimants Sh.Pratap Singh, Sh Ramayan Mehto were promoted to the machine man on pay scale of Rs. 4000-6000 on adhoc basis. The seniority list of the claimants is WW1/8 and name of claimants Sh. Pratap Singh in seniority No. 07 and Sh. Kripal Singh in No. 08. It is thus clear from the above evidence that the particulars of the claimants herein, as mention in demand notice and statement of claim stand supported by documents discussed above. As such the action of the management in denying the regularization of service to the claimants from the date they are working namely 1. Sh. Pratap Singh, 2. Ramayan Mehto and 3. Kripal Singh from the date they are working offset

machine man. i.e., 12/07/1993, 26/10/1993 and 28/12/2000 respectively in the pay scale of 4500-7000 is not legally justified and also amount to unfair labour practice. The claimants Sh. Pran Nath is entitled to the pay scale of offset machine assistant in the pay scale of Rs. 4000-6000 from the date when he was performing the duty of offset machine assistant. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

A.C. DOGRA, Presiding Officer

Date: January 11, 2017

नई दिल्ली, 7 मार्च, 2017

**का.आ. 718.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कमिश्नर, म्युनिसिपल कारपोरेशन ऑफ दिल्ली एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नंबर-1 दिल्ली के पंचाट (संदर्भ संख्या 123/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.01.2017 को प्राप्त हुआ था।

[सं. एल-42011/86/2013-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 7th March, 2017

**S.O. 718.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 123/2013) of the Central Government Industrial Tribunal-cum-Labour Court, No. 1, New Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the Commissioner, Municipal Corporation of Delhi and their workman, which was received by the Central Government on 10.01.2017.

[No. L-42011/86/2003-IR (DU)]

RAJENDRA JOSHI, Dy. Director

#### ANNEXURE

**IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI**

#### ID No.123/2013

Shri Kishan Swaroop, S/o Shri Bhoori Lal, through  
The General Secretary,  
MCD General Mazdoor Union, Room No.95,  
Barracks No.10, Jam Nagar House,  
Shah Jahan Road, New Delhi

...Workman

#### Versus

The Commissioner,  
Municipal Corporation of Delhi (MCD)  
Town Hall, Chandni Chowk,  
Delhi – 110 006

...Management

#### AWARD

Consequent upon receipt of reference under sub-Section (1) and sub-Section (2A) of Section 10 of the Industrial Disputes Act, 1947 (in short the Act) from Government of India, Ministry of Labour and Employment vide letter No.L-42011/86/2013-IR(DU) dated 05.09.2013, this Tribunal was required to decide the reference, terms of which is as under:

“Whether the workman Shri Kishan Swaroop S/o Shri Bhoori Lal is entitled to the medical expenses incurred by him in his treatment/heart surgery? To what relief is the workman is entitled and what directions are necessary in this respect?”

2. It is clear from statement of claim that claimant herein was posted in Ward No.162, Malviya Nagar, New Delhi under South Delhi (Horticulture) Zone of Municipal Corporation of Delhi. In fact claimant was admitted to Batra Hospital and Medical Research Centre on 03.06.2009 at 9.15 p.m. in emergency with prolonged chest pain and was diagnosed as unstable angina. He was discharged on 09.06.2009 after undergoing treatment/surgery as is clear from discharge certificate. Claimant incurred expenses of Rs.1,62,819.00 as cost of treatment and surgery. Initially amount was paid by the claimant by taking loans from his relatives. Since it was an emergency case, claimant had no option but to get himself admitted in a nearby hospital. Later on, the claimant applied for medical reimbursement. However, his claim was rejected unlawfully by the so called expert committee of who opined that there was no emergency. Thereafter, the claimant made a request to the Chairman of MCD for a public hearing after rejection of his case. Copy of representation as well as medical bills were also diarized. Claimant thereafter raised a demand notice through MCD General Mazdoor Union vide Annexure C and the union sponsored the case of the claimant on 10.01.2012. The above union is duly registered and recognized. Copy of failure report is Annexure G. It was thereafter reference has been made by the central Government in the above matter under Section 10 (1) & 2-A of the Act in the above manner. Finally workman has claimed that an amount of Rs.1,72,819.00 incurred by him towards his treatment be granted in his favour.

3. Claim was resisted by the management who filed written statement taking preliminary objection that the industrial dispute is not espoused by majority of workman nor demand notice has been served upon the management. As such, the present dispute is not an industrial disputes. Reference has been made in a mechanical manner and the union has no locus standi to raise the present dispute.

4. On merits, it is admitted that the claimant is a workman of the management . However, his allegation regarding medical treatment and incurring of expenses has been specifically denied by the management. It is further denied that the workman had made reference to the Commissioner of MCD for a public hearing and the management has alleged that no expenses in the manner alleged by the claimant was incurred on his medical treatment.

5. Against this factual background, my learned predecessor vide order dated 29.01.2014, framed the following issues:

- (i) Whether the dispute has not acquired character of an industrial dispute for want of disposal by the union or considerable number of workmen in the establishment of the management?
- (ii) Whether dispute has not acquired character of an industrial dispute for want of service of notice of demand on the management?
- (iii) As in terms of reference

6. Claimant, in order to prove his case against the management examined himself as WW1 and tendered in evidence his affidavit Ex.WW1/A alongwith documents Ex.WW1/1 to Ex.WW1/3. The claimant also examined Shri B.K. Prasad as WW2, whose affidavit is Ex.WW2/A , who also tendered in evidence documents Ex.WW2/1 to Ex.WW2/5.

7. Management was afforded several opportunities to rebut the case of the claimant but they failed to examine any witness so as to controvert the evidence of the management. Finally, vide order 19.08.2016 management was proceeded ex-parte.

#### **Issue No1 and 2**

8. Both these issues are being taken up together for the purpose of discussion as they are inter-related and can be conveniently dispose of. It is clear from the averments made in the statement of claim that the claimant herein has raised a demand before the union regarding reimbursement of medical bills before the MCD General Mazdoor Union. It is clear from perusal of document Ex.WW2/1 that Shri B.K. Prasad, General Secretary of the MCD General Mazdoor Union has written to the Commissioner, MCD regarding reimbursement of medical expenses in respect of the claimant. He has made a request to the Commissioner to look into the matter and give direction for reimbursement of Rs.1,62,819.00 towards medical expenses. Further, Ex.WW2/2 is the registration certificate of the union headed by Shri B.K. Prasad. This certificate also clearly shows that MCD General Mazdoor Union has been registered under the Indian Trade Union Act, 1921 on 23.01.1992. there is nothing on record to show that the above union is not represented by substantial number of workmen. Since this objection has been raised by the management in its written statement, as such, it was incumbent upon the management to have brought some evidence on record to prove its plea. Hon'ble Apex Court in State of Bihar vs. Kripa Shankar Jaiswal (1961) Vol 2 SCR) observed as under:

For a dispute to constitute an industrial dispute it is not a requisite condition that it should be sponsored by a recognized union or that all the workmen of an industrial establishment should be parties to it. A settlement arrived at in course of conciliation proceedings falls within [section 18\(3\)\(a\)](#) and (d) of the [Industrial Disputes Act](#) and as such binds all the workmen though an unregistered union or only some of workmen may have raised the dispute. The absence of notice under [section 11\(2\)](#) by the Conciliation Officer does not affect the jurisdiction of the conciliation officer and its only purpose is to apprise the establishment that the person who is coming is the conciliation officer and not a stranger.



9. It is clear from ratio of the above ruling that even minority union can also take up the matter of the workman under the Act and the dispute will become an industrial dispute when it is sponsored by such minority union. In the case on hand, as stated above, there is not even an iota of evidence to show that union headed by Shri B.K Prasad is not represented by majority of workman. There is also espousal and sponsorship certificate, which clearly shows that the managing committee has authorized Shri B.K. Prasad, President of the Union to sign the statement of claim on behalf of the claimant.

10. There is another document which shows that the Assistant Labour Commissioner has also taken up the matter of the claimant with the management. However, management failed to file written statement even before the ALC, resulting into failure of conciliation proceedings.

11. Equally merit-less is the plea taken by the management that the present dispute is not sponsored or espoused by substantial number of workmen. It is fairly settled position in law that even non-espousal of a case by the union would not deprive the workman of the relief to which the workman is otherwise entitled under the law. Such view appears to have been taken in the case of Nazrul Hassan Siddiqui vs. Presiding Officer, Industrial cum Labour Court Bombay (1997) Lab.I.C. 1807. In the above cited case also contention was raised by the management that the dispute does not fall within the definition of 'industrial dispute' and the same has not been referred or supported by substantial section of workmen. High Court rejected the plea of the management by placing reliance upon the decision of the Hon'ble Supreme Court in the case of Associated Cement Companies Ltd. (AIR 1960 SC 777), which it was observed as under:

'We have already noticed that an industrial dispute can be raised by a group of workmen or by a union even though neither of them represent the majority of the workmen concerned; in other words, the majority rule on which the appellant's construction of Section 19(6) is based is inapplicable in the matter of the reference under Section 10 of the Act. Even a minority group of workmen can make a demand and thereby raise an industrial dispute which in a proper case would be referred or adjudication under Section 20.'

12. In view of the ratio of the judgement discussed above, it is clear that espousal of a dispute by the union is not sine qua non for adjudication of such dispute in terms of Section 10 of the Act. Consequently, both these issues are decided in favour of the workman and against the management.

### **Issue No.3**

13. Now, the next vital question is whether the claimant is entitled to the medical expenses incurred by him on his treatment, i.e. heart surgery. It is clear from the averments made in the statement of claim that the claimant herein suffered severe pain in his chest as a result of which he was admitted to Batra Hospital and Medical Research Centre on 03.06.2009 at 9.15 p.m. This fact is also corroborated by the evidence of the claimant by way of Ex.WW1/A, which is on the same lines as the averments contained in the statement of claim. Perusal of certificate Ex.WW1/1 shows that the claimant was admitted to Batra Hospital Medical Research Centre vide admission No.2950697 on 03.06.2009 at 9.15 p.m. in emergency with prolonged chest pain diagnosed as unstable angina. He was admitted in emergency ward. Further medical certificate Ex.WW1/2 gives history of the patient, including investigation conducted by the doctor in this regard. Thereafter, claimant was discharged from the hospital on 09.06.2009. He has claimed Rs.1,62,819.00 as medical expenses on his treatment. Management seems to have rejected claim for reimbursement on the grounds that there was no emergency. It is clear from perusal of the minutes of the meeting, that Expert Committee was constituted which was headed by Dr. S Vasu. Committee has considered the claim of 63 workmen in the said meeting held on 24.09.2009. Claim of Shri Kishan Swaroop finds mention at serial no.35 and in the remarks column it is mentioned "No emergency, not recommended", which is clearly suggestive of the fact that the claimant was not held entitled for medical reimbursement as in the opinion of the Expert Committee it was not an emergent case. There is a lot of merit in the contention of the learned A/R for the claimant that when a person is struggling for life on account of pain in his chest, he would normally go to the nearest hospital for immediate medical treatment so as to save his life. In such a critical situation, there is no question of approaching such doctor or hospital which is on the panel of the management. In the past also, management has been making payment in respect of emergent cases to several workmen. Case of the claimant herein is in no way different and evidence on record clearly shows that the claimant has undergone heart surgery and remained in emergency ward of Batra Hospital and Medical Research Centre. In my considered opinion, Expert Committee has rejected the claim for reimbursement on very flimsy grounds without going deep in the matter and appreciating the documents already filed by the claimant with the management. There is no speaking order passed by the management as to how case of the claimant is not an emergent one.

14. There are no specific instructions or order constituted by the management so as to show that in case of an emergent or exceptional circumstance, medical treatment is to be obtained by an employee only from empanelled hospitals/doctor. However, in Swamy Hand Hook – 2014, it is clearly mentioned that in case of serious accidents or illness, an employee or a member of his family may be admitted to the nearest private hospital in the absence of Government or recognized hospital nearer than the private hospital. Reimbursement of the expenditure may be allowed in such cases by the Head of Department as per rules.

15. It is further clarified that a person on the spot may use his discretion for taking the patient to the private hospital and the medical expenses incurred in a private hospital are reimbursable without any distinction between

private hospital/clinic/nursing home. There is also no limit that can be reimbursed on such grave or exceptional situation. Since in the present case also the claimant has severe chest pain as a result of which he had to undergo treatment for unstable angina. As such, this Tribunal is of the view that even if there which prescribe treatment from empanelled hospitals, there can be relaxation of such rules or standing orders when a patient is struggling between life and death as was the position in the case on hand.

16. Thus, having overall regard to the facts and circumstances of the case, it can be specifically said that the claimant herein is entitled to Rs. 1,62,819.00 as medical expenses and this Tribunal cannot ignore the fact that the management has not adduced even an iota of evidence to prove that the case of the claimant was not emergent in nature. Management has not examined the doctors who have opined in a slipshod and cursory manner that the case of the claimant is not recommended as it is not an emergent one. It is not the case of the management workman has not suffered any such attack or had not undergone treatment at Batra Hospital and Medical Research Centre.

17. As a sequel to the discussions made herein above, it is held that Shri Kishan Swaroop, the claimant herein is entitled to the medical reimbursement claim of Rs.1,62,819.00 incurred by him in his treatment/surgery. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

A.C. DOGRA, Presiding Officer

Dated : January 5, 2017

नई दिल्ली, 7 मार्च, 2017

**का.आ. 719.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार चीफ, मेडिकल ऑफिसर, आल इंडिया इंस्टिट्यूट ऑफ मेडिकल साइंसेज नई दिल्ली व अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नंबर-1, नई दिल्ली के पंचाट (संदर्भ संख्या 21/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.02.2017 को प्राप्त हुआ था।

[सं. एल-42011/108/2013-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 7th March, 2017

**S.O. 719.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 21/2014) of the Central Government Industrial Tribunal-cum-Labour Court, No. 1, New Delhi as shown in Annexure, in the industrial dispute between the employers in relation to the Chief Medical Officer, All India Institute of Medical Sciences, New Delhi and other and their workman, which was received by the Central Government on 28.2.2017.

[No. L-42011/108/2013-IR (DU)]

RAJENDRA JOSHI, Dy. Director

#### ANNEXURE

**IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1, KARKARDOOMA COURT COMPLEX, SHAHDRA, DELHI- 32**

**ID NO. 21/2014**

Shri Chandervir Singh, S/o Sh. Babu Ram  
H-16/140, Ratia Marg (Near Public School)  
Through Bhartiya Janta Mazdoor Sangh, A-704,  
Transit Camp G. Puri, New Delhi- 110019

...Workman

**Vs.**

1. The Chief Medical Officer,  
All India Institute of Medical Sciences,  
Ansari Nagar,  
New Delhi – 110019

2. M/s Prehari Protection Systems Pvt. Ltd.,  
BA-150 B, IInd Floor, Jail Road,  
Janak Puri, New Delhi- 110058

...Management

### AWARD

Consequent upon receipt of reference from Government of India vide letter No. L-42011/108/2013 – IR(DU) dated 16-01-2014, under clause (d) and Sub-Section (2A) of Section 10 of I.D. Act 1947(14 of 1947), this tribunal is required to adjudicate an industrial dispute the terms and conditions which is as under:-

“Whether the action of the management of M/S PREHARI PROTECTION SYSTEMS PVT LTD. in terminating the employment of the Workman Sh. Chandervir Singh S/o Sh. Babu Ram is illegal and/or unjustified and, if yes, to what relief is the workman entitled and what directions are necessary in this respect?”

2. It is clear from the statement of claim that claimant Sh. Chandervir Singh was engaged on 01-01-2009 as Security Guard on salary of Rs. 5860 per month through a contractor i.e, Management No. 2. The claimant performed his duties honestly and satisfactorily without any complaint from the management. The claimant was not being paid minimum wages nor granted EPF, Bonus and other allowances permissible under the law. Claimant made demand for the same. The salary of the claimant from 01-12-2011 to 30-12-2011 was with held. Finally the service of the claimant was terminated on 30-12-2011 by the management.

3. It is the case of the claimant that he was in the employment of the management No. 2, who has not paid even the minimum wages to the claimant and the service of the claimant has been terminated by the management No. 2 without any charge sheet or show cause notice. The claimant was not paid salary for the above period and the fake cheque No. 057944 was issued by the management to the claimant which could not be in cashed. When claimant enquired about this from management No.2 the contractor refused to make the payment in cash.

4. The claimant, thereafter, took up the matter with his union, who espoused the case of the claimant and ultimately both parties appeared before ALC where no settlement could be arrived and failure report was submitted by the ALC to the Government. Thereafter, the present reference was made the central Government to this tribunal.

5. Despite notice none appeared on the behalf of the management, as a result of which fresh notice was issued again for appearance of the management No. 1 for 10-6-2014. Thereafter, written statement filed on behalf of the management No.1 and nobody appeared on behalf of the management No. 2 as such management No. 2 was proceeded ex-party vide order dated 15-12-2016. This tribunal vide order dated 02-05-2016 framing the following issues:-

1. Whether action of the Management in terminating employment is legal and justified?
2. No specific issue on the pleading of the parties except the reference of Central Government.

6. The claimant in support of his case was examined Sh. Chandervir Singh as WW1 who has tendered in evidence his affidavit Ex. WW1/A and documents WW1/1 to WW1/6.

7. Issue No. 1 And 2 :

Both these issues are being taken up together for the purpose of discussion as same are interrelated and can be conveniently disposed of. It is clear from the statement of claim as well as affidavit of claimant Sh. Chandervir Singh Ex. WW1/A that he was engaged by the management on 01-01-2009 and performing his duty continuously till until his termination on 30-12-2011. The learned A/R for the claimant invited the attention of this tribunal to attendance card/ ID card Ex.WW1/3 and Ex. WW1/4 which shows that claimant was issued their ID Card by the management No. 2 which was valid from 01-01-2009 to 31-12-2009. Thereafter, the said card was renewed and the same was valid from 27-01-2010 to 31-12-2010. The claimant has also filed his claim before the ALC which is on the similar line as the statement of claim filed before this tribunal. The demand notice is Ex. WW1/2. The claimant has also filed certificate Ex. WW1/5 which relate to the information regarding EPF sought by the claimant under the RTI Act. There is mention of amount deposited in the account of the claimant which also shows that claimant was in the employment of the management as a Security Guard. Further, undertaking Ex.WW1/6 given to management No. 2 i.e, Protection Private Systems Ltd. also shows that an amount of Rs. 38659 was deposited in the PF account of the claimant.

8. Admittedly, no evidence has been adduced by the management No.1 and management No.2 so as to controvert the allegation made in statement of claim. Though AIIMS i.e, management No. 1 filed Written Statement but management has not cross examined the claimant nor adduced any evidence so as to rebut the case of claimant. In fact management No. 1 has not filed the Written Statement in proper form. In such circumstances, this tribunal is left with no choice except to rely upon the evidence adduced by the claimant. As discussed above, it is clear from the evidence adduced by the claimant that he was engaged as a Security Guard on 01-01-2009 and his services arbitrary terminated on 30-12-2011 without any show cause notice or enquiry. Thus, there is gross violation of provision of Section 25 –F of the ID Act. Since claimant was continuously in the employment of management No. 2 w.e.f. 01-01-2009 and has

completed more than 240 days in a year, in such a situation the service of claimant cannot be terminated without service of one month notice or payment of one month salary in lieu of notice Section 25-F:-

(i) Section 25F lays down the conditions precedent to retrenchment of workman (en) and requires the employer to give notice to the appropriate government/prescribed authority apart from giving one month's notice in writing or one month's wages in lieu of the notice and payment of retrenchment compensation to the concerned workman(en); Empire Industries Ltd. V. State of Maharashtra, AIR 2010 SC 1389: (2010) 4 SCC 272: JT 2010 (3) SC 95.

9. In view of the discussion made herein above. It is held that action of the Management No.2- M/s Prehari Protection Systems Pvt. Ltd., BA-150 B, IIInd Floor, Jail Road, Janak Puri, New Delhi- 110058. In terminating the employment of claimant Sh. Chandervir Singh is totally illegal and unjustified. As a consequence, it is further held that claimant is entitled for reinstatement with full back wages to be paid by management No.2. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

A.C. DOGRA, Presiding Officer

Date: February 20, 2017

नई दिल्ली, 7 मार्च, 2017

**का.आ. 720.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर, ओर्दनांस फैक्ट्री बोलन गीर एवं अदर्स और उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेश्वर के पंचाट (संदर्भ संख्या 34/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.02.2017 को प्राप्त हुआ था।

[सं. एल-14011/11/2011-आईआर (डीयू)]

राजेन्द्र जोशी, उप निदेशक

New Delhi, the 7th March, 2017

**S.O. 720.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 34/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in Annexure, in the industrial dispute between the employers in relation to the General Manager, ordnance Factory Bolangir and other and their workman, which was received by the Central Government on 15.2.2017.

[No. L-14011/11/2011-IR (DU)]

RAJENDRA JOSHI, Dy. Director

#### ANNEXURE

#### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BHUBANESWAR

**Present :** Shri B.C. RATH, Presiding Officer,  
C.G.I.T.-cum-Labour  
Court, Bhubaneswar.

#### **INDUSTRIAL DISPUTE CASE NO. 34/2012**

L-14011/11/2011-IR(DU), dated 07.02.2012

#### **Date of Passing Order – 9<sup>th</sup> January, 2017**

#### **Between:**

1. The General Manager,  
Ordnance Factory, At./Po. Badmal,  
Dist. Bolangir, Orissa – 767 770.
2. The Proprietor,  
Janbaaz Guards and Allied Services,  
Contractor, Ordnance Factory,  
At./Po. Badmal, Dist. Bolangir, Orissa.

... 1<sup>st</sup> Party-Managements

**AND**

Shri Jitendra Kumar Bagarty,  
At.Po. Gandagadrapali,  
Via. Saintala, Dist. Bolangir,  
Orissa – 767 032.

...2<sup>nd</sup> Party-Workman.

**Appearances:**

For the 1 <sup>st</sup> Party-	..M/s. S.K. Mohapatra,
Management No. 1.	Advocate.
For the 1 <sup>st</sup> Party-Management No. 2.	... None.
For the 2 <sup>nd</sup> Party-Workman.	...None

**ORDER**

Legal representative for the 1<sup>st</sup> Party-Management No. 1 is present. None is present for the 2<sup>nd</sup> party-Workman and 1<sup>st</sup> Party-Management No. 2 on repeated calls. Perusal of the case record reveals that the 2<sup>nd</sup> party-Workman has filed his statement of claim on 13.04.2012, whereas the 1<sup>st</sup> Party-Management No. 1 on being noticed filed its written statement on 27.6.2012. Thereafter the case was posted for settlement of issues and for evidence of the 2<sup>nd</sup> party-workman from time to time. Neither the 2<sup>nd</sup> party-workman has appeared nor has filed any affidavit evidence under Order 18 Rule 4 C.P.C. for which notice was issued to him on 15.11.2016 fixing to today for his appearance and to adduce evidence. As none is present from the side of the 2<sup>nd</sup> Party-workman on the date fixed it seems that either the 2<sup>nd</sup> party-workman is not interested to prosecute the dispute or the dispute might have been settled amicably out of the Tribunal. In the above back-drops there is no alternative than to pass a no-dispute award and accordingly a no-dispute order is passed in the case.

2. Accordingly the reference is answered in the above terms.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer.

नई दिल्ली, 8 मार्च, 2017

**का.आ. 721.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उप निदेशक, लेखा (डाक), भोपाल एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 90/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.12.2016 को प्राप्त हुआ था।

[सं. एल-40012/526/2000-आईआर (डीयू)]

शकुंतला पटनायक, उप निदेशक

New Delhi, the 8th March, 2017

**S.O. 721.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 90/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in relation to the Dy. Director, Accounts (Postal), Bhopal and their workman, which was received by the Central Government on 14.12.2016.

[No. L-40012/526/2000-IR (DU)]

SHAKUNTALA PATNAIK, Dy. Director

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
JABALPUR****NO. CGIT/LC/R/90/2001**

Shri Ajit Singh  
S/o Late Shri Ram Bihari Singh,  
R/o 124/15, Shivaji Nagar,  
Bhopal (MP)

...Workman

**Versus**

Dy. Director,  
O/o Dy. Director Accounts (Postal),  
GTB Complex,  
Bhopal (MP)

...Management

**AWARD**Passed on this 28<sup>th</sup> day of October, 2016

1. As per letter dated 27-4-01 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No .L-40012/526/2000/IR(DU). The dispute under reference relates to:

“Whether the action of the management of Dy. Director, Accounts Postal Deptt., Bhopal by terminating the services of Shri Ajit Singh S/o Late Shri Rambihari Singh w.e.f. 28-2-86 and non payment of wages is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/1 to 2/4. Case of Ist party workman is that in 1982, he was engaged on class IV post following selection process. He was paid pay as per regular pay scale. On 15-12-83, his services were terminated without notice, retrenchment compensation was not paid to him. He worked more than 240 days during each of the calendar years. He acquired status of regular employee. His services were illegally terminated. 2<sup>nd</sup> party not followed principles of last come first go. 2<sup>nd</sup> party had not displayed seniority list while terminating his services. Permission of Government was not taken for termination of his services. Ist party further submits that on 28-2-86, settlement was arrived between parties. As said settlement was not followed by management, workman was not taken in employment.

3. Ist party further submits that proceeding under Section 33(C)(2) was filed for recovery of pay/ wages was allowed as per order dated 9-1-92. Said order was challenged by management filing writ Petition 2066/92. Writ Petition was dismissed by Hon'ble High Court on 2-7-99. That management had not paid amount of wages claimed by him. On above facts, workman submits termination of his services be declared illegal. Direction be given for payment of wages from 28-2-86 and he may be reinstated with backwages.

4. 2<sup>nd</sup> party filed Written Statement on 12-4-06 opposing claim of workman. As per 2<sup>nd</sup> party, department had engaged 9 casual labours including Ajit Singh, Ist party workman for casual nature of work in the year 1982. Their services were terminated in December 1983. Dispute was raised by employees Union Bhopal before ALC Bhopal invoking Section 25-F of ID Act. On 3-2-86, settlement was arrived. It was agreed by management that workers involved in the dispute will be reemployed on same terms and conditions on which they were employed. It was agreed by management that seniority list of workers on basis of actual number of days shall be prepared. It was agreed by management in case of regular vacancies, above said workman will be regularized. It was agreed by Union that workman shall have no claim on back wages for the period from date of termination till date of re-employment. Union agreed to treat the issue as finally resolved. It was agreed that both parties will submit compliance report latest by 20-2-86 following which it will be presumed that the settlement is fully implemented.

5. 2<sup>nd</sup> party further submits that in compliance of above settlement, notices were sent to 9 casual labours including Ajit Singh for his engagement as casual labour during the period 5-3-86 to 5-6-86. Its copy were endorsed to AL, Bhopal. That any of the 9 casual labours did not turn up for duty. They were informed that if they failed to resume duty, their name would be removed. Instead of offer of employment and notice for resuming duty after settlement dated

3-2-86, workman had failed to report for duty. ALC was informed about the matter on 11-6-86. 2<sup>nd</sup> party further submits that Ist party workman Ajit Singh and other casual labours had accepted the payment. Ist party workman had received amount of Rs.7457/-. The order passed by Labour Court dated 9-1-92 was challenged before CAT, Jabalpur. Said proceeding was disposed off on ground of jurisdiction. Writ Petition No. 2066/92 was also dismissed on ground of misstatement that they have been reinstated. That Ist party workman Ajit Singh failed to honour the settlement arrived. 2<sup>nd</sup> party further submits that Union had agreed to settle the issue finally. Workman will have no claim for backwages. That claim for re-employment is uncalled. On such ground, 2<sup>nd</sup> party prays for rejection of claim.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Dy. Director, Accounts Postal Deptt., Bhopal by terminating the services of Shri Ajit Singh S/O Late Shri Rambihari Singh w.e.f. 28-2-86 and non payment of wages is justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

### REASONS

7. The terms of reference pertains to legality of termination of services of Ist party workman w.e.f. 20-2-86. Workman filed affidavit of his evidence. However management failed to cross examine workman. The right to cross examine workman was closed on 7-6-2013 workman in his affidavit of evidence has stated that management did not follow settlement dated 5-2-86 that Labour Court Bhopal had passed order dated 9-1-92 was challenged by filing Writ Petition No. 2066/92 was dismissed on 2-7-99. That he was not paid wages. Workman was not engaged on work as per settlement. Individual affidavit is filed by Ajit Singh.

8. Evidence of management was closed on 7-4-14, said order was recalled in view of no objection on 13-8-2014. Management did not file application for recalling order dated 7-6-2013 for cross examination of workman.

9. Management's witness Shri S.D.Charde filed affidavit of his evidence. In para 5 of his affidavit of evidence, it is stated that as per memorandum of settlement dated 3-2-86, the settlement was arrived on 3-2-86. It was agreed that management will re-employ on same terms and conditions. Workman will not claim backwages. Dispute would be treated finally resolved. In his affidavit of evidence, management's witness has in Para 9 of his affidavit stated that compensation Rs.4057 was paid to workman. That workman and other casual labours had failed to report for duty as per the settlement. Management's witness in his cross examination said he is working in Bhopal office since August 2014. Before engagement of workman, his name was called from Employment Exchange. He denies that before engagement of workman, permission of superior officer was not taken. Any document in that regard is not produced. Workman was not paid retrenchment compensation. He was unable to tell whether notice of termination was issued to workman or any enquiry was conducted against him. He admits that in 1982, settlement was arrived. He denies that after said settlement, workman was not engaged. Management's witness re-affirms that notice was sent to workman but he failed to report for work. Documents in that regard are not produced. Workman was engaged for filling water in cooler., documents in that regard are not produced. It is clear from pleadings in Written Statement and evidence of management's witness that settlement was arrived on 3-2-86 for providing employment to workman. Workman would not claim backwages. Though management's witnesses says that though notice by RPAD was issued to workman for his engagement, documents are not produced. It is clear from above discussion that the termination of Ist party workman is illegal. Management not followed the settlement dated 3-2-86. For above reasons, I record my finding in Point No.1 in Negative.

10. Point No.2- In view of my finding in Point No.1 termination of services of Ist party is illegal, he was not provided employment as per settlement dated 3-2-86, considering the 2<sup>nd</sup> party management has failed to implement settlement dated 3-2-86, the workman is entitled for reinstatement with 50 % backwages from order of reference i.e. 27-4-01. Accordingly I record my finding in Point No.2.

11. In the result, award is passed as under:-

- (1) The action of the management of Dy. Director, Accounts Postal Deptt., Bhopal by terminating the services of Shri Ajit Singh S/o Late Shri Rambihari Singh w.e.f. 28-2-86 and non payment of wages is not proper and legal.
- (2) Workman is entitled for reinstatement with 50 % backwages from order of reference i.e. 27-4-01.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R.B.PATLE, Presiding Officer

नई दिल्ली, 8 मार्च, 2017

**का.आ. 722.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार प्रिंसिपल, जवाहर नवोदय विद्यालय, मध्य प्रदेश एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 184/00) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.12.2016 को प्राप्त हुआ था।

[सं. एल-42012/174/2000-आईआर (डीयू)]

शकुंतला पटनायक, उप निदेशक

New Delhi, the 8th March, 2017

**S.O. 722.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 184/00) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in relation to Principal, Jawahar Navodaya Vidyalaya, Madhya Pradesh and their workman, which was received by the Central Government on 14.12.2016.

[No. L-42012/174/2000-IR (DU)]

SHAKUNTALA PATNAIK, Dy. Director

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

#### NO. CGIT/LC/R/184/00

Shri Jahim Baksh,  
S/o Shri Khuda Baksh,  
Pipri Ward No.1,  
Navgaon, Chhattisgarh (MP)

...Workman

#### Versus

The Principal,  
Jawahar Navodaya Vidyalaya,  
Navgaon (BKD),  
Chattarpur (MP)

...Management

#### AWARD

Passed on this 16<sup>th</sup> day of November, 2016

1. As per letter dated 30-10-2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-42012/174/2000/IR(DU). The dispute under reference relates to:

“Whether the action of the Principal, Jawahar Navodaya Vidyalaya, Navgaon, Distt. Chhattarpur in not regularizing the services of Shri Jahim Baksh, Helper and subsequently terminating his services w.e.f. 23-7-97 is legal and justified? If not, to what relief is the workman entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 4/1 to 4/2. Case of workman is that he was employed as Mess Helper in Jawahar Navodaya Vidyalaya in 1990 on daily wage basis. He was continuing to work as Mess Helper till 23-7-97. His services were terminated. Workman reiterates that he continuously worked for 7 years without break. He worked 240 days continuously during each of the calendar year. His service record was excellent. No chargesheet was issued for any misconduct. He was working 14-16 hours per day. He was also required to work at residence of the Principal. Though he was working for long period in



the school, his services were not regularized. His services were terminated without notice. Salary in lieu of notice was not paid to him. Retrenchment compensation was not paid to him. Termination is not in violation of Section 25-F of ID Act.

3. 2<sup>nd</sup> party filed Written Statement opposing claim of workman. 2<sup>nd</sup> party raised preliminary objections that Ist party was serving as part time on daily wage basis in Navodaya Vidyalaya which is co-educational residential schools run by Navodaya Vidyalaya Samiti, New Delhi. It is discharging sovereign functions of imparting school education and is a State within meaning of Article 12 of constitution of India. The Vidyalaya is located in rural areas in each district. There are both teaching and non-teaching staff. Society adopted all Civil Service Rules with modifications. It is reiterated that provisions of ID Act are not applicable. It is further reiterated that the Central Administrative Tribunal has jurisdiction about the disputes of the employees. 2<sup>nd</sup> party reiterates that Ist party workman was engaged as Mess Helper by way of staff gap arrangement. He was not appointed on regular basis. After regular candidate was appointed, the services of Ist party workman were discontinued. Workman is not entitled to retrenchment compensation. As provisions of ID Act are not applicable, 2<sup>nd</sup> party prays that reference be answered in its favour.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the Principal, Jawahar Navodaya Vidyalaya, Navgaon, Distt. Chhattarpur in not regularizing the services of Shri Jahim Baksh, Helper and subsequently terminating his services w.e.f. 23-7-97 is legal and justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

#### REASONS

5. The term of reference pertains to denial of regularisation and legality of termination of services of Ist party workman. Ist party workman filed affidavit supporting his contentions in statement of claim that he was engaged as Mess Helper on 30-8-90. He was paid Rs.300 per month. His appointment was against vacant post. His services were terminated on 23-7-97 without notice, retrenchment compensation was not paid to him. He was not regularized in service. Malafidely his services were terminated. From evidence, documents Exhibit W-1(a) to (d) and W-2 are admitted in evidence. Workman in his cross says he has passed 5<sup>th</sup> standard, his age was 32 years at the time of evidence recorded. Appointment letter was not issued to him. He claims ignorance about contents of para 3 of his affidavit. It pertains to appointment and regularization of Sukhlal and Usman. His name was sponsored through Employment Exchange. Documents are produced on record. Documents produced by workman Exhibit W-1(a) to 1(e) shows Ist party workman was working as Mess helper during the period 30-8-90 till 21-8-96. In those documents, certificates are issued about working for different period by Ist party. The evidence of workman is supported by documents that he was in continuous service from his engagement till his termination. He worked more than 240 days. His services were terminated without notice.

6. In his affidavit of evidence, management's witness Jagnayak Yadav supported contentions in Written Statement filed by management. That Ist party workman was appointed purely on part time basis as stop gap arrangement pending regular appointments and posting of Mess Helper. He was not appointed on regular basis. That workman not completed 240 days continuous working. That Navodaya Vidyalaya Samiti has adopted central rules. ID Act is not applicable. Provisions of Administrative Tribunal Act are applicable in the matter. In his cross examination, management's witness says during 1990 to 1997, he was not posted at Navgaon. He was not knowing about staff opposition during 1990 to 1997. Workman was not engaged on 30-8-90 on vacant post of Mess Helper. In August 1990, regular post of Mess Helper was not sanctioned. Said post was sanctioned in 1992. Interviews conducted in December 1992. The post was not advertised, vacancy was notified to Employment Exchange. Workman was allowed for interview. The record of interview is produced by 2<sup>nd</sup> party. It shows that workman participated in interview but he was selected at Sl.No.3. Only interview was conducted for 2 post therefore workman could not be appointed. The documents Exhibit W-(a) to (e) corroborates evidence that he completed more than 240 days continuous service preceding his termination. He was not paid retrenchment compensation, therefore I record my finding in Point No.1 in Negative.

7. Point No.2- In view of my finding in Point No.1 termination of services of Ist party workman is illegal for violation of Section 25-F of ID Act, question remains for decision is whether he is entitled for reinstatement with backwages. Evidence on record is clear that he participated in interview but was on sl.No.3 and could not be given appointment. Regular candidate has been selected and given appointment following selection process in which workman had participated therefore claim of reinstatement with backwages cannot be allowed.

8. Shri P.C.choubey Advocate for Ist party relies on ratio held in case between-

BSNL versus Bhupal . My attention is pointed out to Para 26 of the judgment. Compensation Rs. 2 Lakh was allowed to each of the workman in above cited case.

Ist party workman has also worked continuously for about 7 years. Considering the period of his working, compensation Rs.1,50,000 would be appropriate. Accordingly I record my finding in Point No.2.

9. In the result, award is passed as under:-

- (1) The action of the management in terminating the services of workman Shri Jahim Baksh, Helper w.e.f. 23-7-97 is not proper and legal.
- (2) 2<sup>nd</sup> party is directed to pay compensation Rs.1,50,000 to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R.B. PATLE, Presiding Officer

नई दिल्ली, 8 मार्च, 2017

**का.आ. 723.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुख्य महाप्रबंधक, बीएसएनएल, भोपाल, एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 47/07) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.11.2016 को प्राप्त हुआ था।

[सं. एल-40012/4/2007-आईआर (डीयू)]

शकुंतला पटनायक, उप निदेशक

New Delhi, the 8th March, 2017

**S.O. 723.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 47/07) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in relation to the Chief General Manager, BSNL, Bhopal and their workman, which was received by the Central Government on 2.11.2016.

[No. L-40012/4/2007-IR (DU)]

SHAKUNTALA PATNAIK, Dy. Director

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

No. CGIT/LC/R/47/07

Shri Ramesh Prasad Malviya  
S/o Shri Anokhlal  
R/o Manwada, PO Datwasa,  
Tehsil Malwa,  
Distt. Hoshangabad

...Workman

#### Versus

Chief General Manager,  
Telecom, BSNL,  
MP Telecom Circle, P&T Bhawan,  
Hoshangabad Road, Bhopal.

...Management

#### AWARD

Passed on this 17<sup>th</sup> day of October 2016

1. As per letter dated 24-5-07 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-40012/4/2007/IR(DU). The dispute under reference relates to:

- “Whether the action of the management of Chief General Manager, BSNL Bhopal in terminating the services of their workman Shri Ramesh Prasad Malviya, Shri Surendra Kumar, Shri Ramswaroop Sarate and Shri Prakash Chandra w.e.f. 3-11-90 is legal and justified? If not, to what relief the workmen are entitled to?”
2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 3/1 to 3/9. Case of Ist party workman is that Ist party No. 1 Ramesh Prasad was employed in 1986. Ist party No.2 to 4 were employed in 1987 in Railway electrification, Door Sanchar as muster roll casual labour. He worked to the satisfaction of their superiors they completed 240 days working during each of the calendar years. Their services were discontinued w.e.f. 30-10-90 in arbitrary manner. Their services were discontinued without conducting DE in violation of Section 25-F of ID Act. They were not served with any notice of termination that one Dhaniram Tiwari whose services were terminated moved the Central Administrative Tribunal, Jabalpur filing OA No. 411/90. His application was allowed on 23-8-95. The order was confirmed by Apex Court. The Ist party claimants filed Original Application 1014/2000. Said application was dismissed on 9-3-04. The claimants had filed Writ Petition No. 5097/2004 which was finally decided on 12-10-04 with the direction that representative to the authority concerned may be decided. The claimants had submitted representation. The authority decided it on 20-6-05. The respondents disputed the claimants worked in Railway Electrification unit. Ist party submits that the said order is contrary to the record and muster rolls. That they worked more than 240 days in every calendar year. They are entitled for one months notice or wages in lieu thereof. Ist party refers to ratio held by Apex Court in case of P&T Deptt. Versus Union of India and others, the citation is not mentioned. That scheme for absorption of casual labours was directed.
  3. Ist party further submits that the 2<sup>nd</sup> party has violated Section 25-F,N of ID Act. The claimants have been discriminated by 2<sup>nd</sup> party. They claimed for reinstatement with backwages. Ist party also submits that action of 2<sup>nd</sup> party is violative of Article 16 of the constitution that the scheme framed by department is known as Casual Labourers Grant of Temporary Status and Regularisation Scheme of the department of Telecommunications 1989. The details of said scheme are narrated in Para 12 to 14 of the statement of claim. That the claimants were not given benefit of the scheme admissible as casual labours would be conferred a temporary status. Their services are terminated without enquiry in OA-42/90, CAT Jabalpur bench had allowed temporary status as per circular dated 17-12-93 considering the cut off date 22-6-88 instead of 30-3-85 that in order dated 20-6-05, it is mentioned that non-availability of muster roll, summary register was produced. The names of claimants not found. Shri R.N.Gupta Assistant Engineer had attested muster roll. For above reasons, Ist party claimants prays for their reinstatement with backwages.
  4. 2<sup>nd</sup> party filed Written Statement opposing claim of Ist party claimants. Preliminary objection is raised by 2<sup>nd</sup> party that claimants workman approached MP High Court filing Writ Petition 5097/07 raising the same issues. Writ Petition was disposed off on 12-10-04 issuing certain directions. The directions were complied as per order dated 20-6-05. The reference is not tenable. The claimant workman never worked with 2<sup>nd</sup> party Railway Electrification Project. The direction issued by Hon’ble High Court in Writ Petition were complied as per order dated 20-6-05. It is reiterated that the claimants workman never worked in Railway Electrification Project. There is no question of arising any ID. That details regarding working days of claimants were called from CGM RE Mumbai as per letter dated 16-3-05. It was intimated that muster rolls are not available in the Railway Electrification where workman claimed to have worked. However register of summary of casual labours who worked in Railway electrification units maintained in the office. On its careful examination, it was found that claimants workmen did not worked under RE unit. 2<sup>nd</sup> party reiterates that claimants workman never worked in RE project. The claimants have not produced verified documents. It is submitted that as Ist party claimants never worked in RE project, they have no right for regularization as per the policy of department. Violation of principles of natural justice or provisions of ID Act have been denied. It is further submitted that the claimants producing records prior to 1990 cannot be verified at late stage as muster roll are not available. 2<sup>nd</sup> party submits that claim of Ist party deserves to be rejected.
  5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Chief General Manager, BSNL Bhopal in terminating the services of their workman Shri Ramesh Prasad Malviya, Shri Surendra Kumar, Shri Ramswaroop Sarate and Shri Prakash Chandra w.e.f. 3-11-90 is legal and justified?	Termination of only Shri Ramswaroop Sarate is illegal.
(ii) If not, what relief the workman is entitled to?”	As per final order.

### REASONS

6. The term of reference pertains to legality of termination of services of claimants Shri Ramesh Prasad Malviya, Shri Surendra Kumar, Shri Ramswaroop Sarate and Shri Prakash Chandra. All of the claimants filed identical affidavits. Shri Surendra Kumar, Shri Ramswaroop Sarate and Shri Prakash Chandra in their affidavit says they were employed in 1987 in Railway Electrification , Door Sanchar on muster roll casual labour. Shri Ramesh Prasad in his affidavit of evidence says he was employed in the year 1976. That all of them completed more than 240 days continuous service as casual labour on muster roll. Their affidavits are also devoted about the order passed by CAT in OA No. 411/90 , OA/1014/2000. Their services were terminated on 30-11-90 without issuing notice or conducting any enquiry.
7. Shri Surendra Kumar in his cross says he does not know English his affidavit is prepared by his Advocate. He does not know what is written in his affidavit. In 1987, he worked in Railway Electrification, Telephone department, Bhopal. Workman himself explained that he worked under BSNL. Officers of BSNL were making payment. How the amount for payment was received, he did not know. He also claimed ignorance whether officers making payment were from Bhopal belong to which department. Document regarding payment was not given to him. His signature was not obtained about the payments made. He claims ignorance what order was passed on his petition he denies that he worked under GM, Rly. Electrification, Bombay. He was not covered under the Bhopal office.
8. Shri Ramesh Prasad in his cross examinations says he had worked at Itarsi Railway Electrification. He did not work at other place. Again in his further cross examination he claims he worked in Bhusawal Khandwa Betul Project. Said project was not completed. Payments were made at the place he was working by officer of BSNL Bhopal. He denies that work of Railway Electrification was not carried by GM, Bhopal. He claims ignorance from where the amount for payment was received. The payments were made by SDO Shri R.N.Gupta.
9. Shri Prakash Chandra in his cross examination is similar to the evidence of cross examination of other claimants. In his cross, he admits that during 1987 to 1990, he was working where work was started. Work was carried regularly. He denies that the payment was made on daily wage basis according to him, payments were made after the month by SDO, BSNL. As per directions by Hon'ble High Court, he submitted application to BSNL. His application was rejected. He denied that he worked in Railway Electrification Bombay at end of his cross examination, he says his affidavit is written in English. He does not know about the contents of his affidavit.
10. Shri Ramswaroop Sarate in his cross says he worked at Itarsi, Hoshangabad in Telephone Exchange during 1987 to 1990. He had worked. He was unable to tell his working days. The book about his working was prepared, its zerox copy is produced. He denies that he did not work for 240 days. He denies that he did not work under GM, Bhopal. SDO was making payment. After termination of his service, he not submitted application to the department. He has not produced original documents. His affidavit was drafted in English by his Advocate and was read over to him.
11. Management filed affidavit of evidence of Shri Shri R.L.Raidas. his affidavit of evidence is devoted about Writ Petition No. 5097/07. Directions were issued by Hon'ble High Court dated 12-10-04 were complied as per order dated 20-6-05. That claimants workmen never worked in office of CGM, Bhopal. Management's witness in his cross says claimants were not engaged in the department neither claimants were terminated by the department. Management's witness denied identity card shown to him management's witness also denied scheme of 1989. He had denied that claimants were terminated on 13-11-90. Management's witness claims ignorance whether muster roll of RE Project are produced in the case. Witness has shown his inability to produce muster roll.
12. Evidence of claimants is not corroborated by documentary evidence. Zerox copies produced by claimants is denied by management's witness.
13. Learned counsel for Ist party Shri P.L.Srivastva during course of argument reiterated that zerox copies produced on record Annexure A-1 to 4 be treated as proved documents. Application for production of documents was submitted by the claimants on 19-12-12. As per order dated 20-1-14 as Shri S.K.Patidar Jr. Engineer was not party to the case, directions for production could not be given as per said order, it was made clear that applicants could file application for summon to produce documents. As per application dated 12-1-14, production of original identity card was allowed. Original I Card of Surendra Kumar shows entries till October 1988. The identity card of Surendra Kumar does not show he was working 240 days prior to the termination of his services on 30-11-1990. Entries in original I Card of Ramswaroop Sarate shows he was working 10 days in November 1990 and continuously working all the days in November 1989. The entries in I card of Ramswaroop clearly shows he worked more than 240 days preceding 2 months of termination of his services w.r.t. to proof of Annexure A-1 to 4, learned counsel for 2<sup>nd</sup> party Shri P.L.Srivastava pointed out my attention to definition of fact, document, evidence proved, not proved under Section 3 of Evidence Act. My

attention is also pointed out to Section 61 of Evidence Act which provides- “the contents of documents may be proved either by primary or by secondary evidence.” Section 64 of Evidence Act deals with proof of documents by primary evidence except in cases herein after mentioned”. Those zerox copies A-1 to 4 are produced. Management has denied custody of original. Counsel for Ist party did not taken any steps for adducing secondary evidence provided under Section 65 of the Evidence Act. It is surprised to say that A- to 4 are not proved by valid evidence.

14. From evidence discussed above, it is clear that evidence of Shri Ramswaroop is corroborated by entries in I Card that he worked more than 240 days preceding 12 months of termination of his services. The claimants 1,2 & 4 have failed to prove that they worked for more than 240 days preceding their termination on 30-11-90. As such the termination of services of Ist party No.3 Ramswaroop Sarathe is illegal for violation of Section 25-F of ID Act. Termination of services of Ist party workmen No. 1,2,4 is legal as they have not completed 240 days continuous service preceding their termination on 30-11-90. The violation of Section 25-F is not established. Ist party workmen have claimed regularization as per scheme of 1989. The term of reference doesnot include claim for regularization the claim for regularization of services of Ist party workman is beyond the terms of reference and cannot be granted. For the reasons discussed above, I conclude that termination of services of only one Ist party workman Shri Ramswaroop Sarathe is not legal. Accordingly I record my finding in Point No.1.
15. Point No.2- In view of my finding in Point No.1 termination of services of Ist party No.3 Ramswaroop only is illegal for violation of Section 25-F of ID Act, question remains for consideration is whether relief of reinstatement with backwages could be granted. The pleadings and evidence of claimant No.3 shows that he was engaged as casual labour during the year 1987 to November 90 for about 3 years. Considering the nature of engagement and period of working, compensation Rs. One Lakh would be appropriate. Claimants No. 1,2,4 however are not entitled to any relief. Accordingly I record my finding in Point No.2.
16. In the result, award is passed as under:-
  - (1) The action of termination of services of Ist party No.13 Shri Ramswaroop Sarathe is illegal. Termination of services of Shri Ramesh Prasad Malviya, Shri Surendra Kumar and Shri Prakash Chandra are legal.
  - (2) 2<sup>nd</sup> party is directed to pay compensation Rs. One Lakh to the claimant Shri Ramswaroop Sarathe.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R.B.PATLE, Presiding Officer

नई दिल्ली, 8 मार्च, 2017

**का.आ. 724.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मुख्य महाप्रबंधक, दूरसंचार विभाग, भोपाल व अन्य उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 7/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.02.2017 को प्राप्त हुआ था।

[सं. एल-40012/390/2000-आईआर (डीयू)]

शकुंतला पटनायक, उप निदेशक

New Delhi, the 8th March, 2017

**S.O. 724.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 7/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in relation to the Chief General Manager, Department of Telecommunication, Bhopal, Others and their workman, which was received by the Central Government on 15.2.2017.

[No. L-40012/390/2000-IR (DU)]

SHAKUNTALA PATNAIK, Dy. Director

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
JABALPUR****No. CGIT/LC/R/7/2001**

Shri Ramesh Kumar Jha,  
S/o Shri Ganeshram Jha  
C/o Premnarayan Jha,  
Matkari Colony,  
Gali No.3, Guna

...Workman

**Versus**

Chief General Manager,  
Deptt. Of Telecommunication,  
Hoshangabad Road,  
MP Circle,  
Bhopal (MP)

District Engineer (Phones), Guna

...Management

**AWARD**Passed on this 23<sup>rd</sup> day of January 2017

1. As per letter dated 17-11-2000 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-40012/390/2000/IR(DU). The dispute under reference relates to:

“Whether the action of the management of District Engineer(Phones), Guna in terminating the services of Shri Ramesh Kumar Jha S/o Ganeshram Jha w.e.f. 21-2-98 is justified? If not, to what relief the workman is entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 4/1 to 4/5. Case of Ist party is that he was appointed on 0-3-88 in general cadre. He was given employment of various nature of work. He did all kind of work assigned to him time to time. Workman was continued in service without break till 21-2-98. He worked 240 days in calendar year without break. Workman claims to have attained right for regularization in service. As per Section 25 B of ID Act that without assigning any reasons, he was prevented from doing his duty from 21-2-98. He was going to office everyday. By oral orders, he was prohibited to perform his duty. There could be no oral termination. In absence of order of termination, he is deemed to be in service. Orally he was told that his services were terminated. He requested for regularization and payment of equal wages. Management did not regularized his services nor paid wages of regular employees following principles of equal work equal pay. Workman has completed 240 days continuous service, he is entitled to protection of ID Act. That his non-engagement amounts to retrenchment in violation of Section 25-F of ID Act. Workman also alleged termination of his service in violation of Section 25-G,H of ID Act. Management violated Rule 77 of Central Rules of ID Act. On such ground, workman prays for his reinstatement with backwages.

3. 2<sup>nd</sup> party filed Written Statement opposing claim of workman at page 6/ to 6/3. 2<sup>nd</sup> party submits that Ist party was not appointed in 1992, the contentions of workman are false. The workman was engaged to do various nature of petty work by Local Officer as per requirement. Payments were made to the labours. Understanding given to such labours that their services could not be continued after completion of the work. Muster roll was stopped since 1985. Workman has not filed any record which can be verified. Ist party not completed 240 days work during any of the calendar years is not covered as employee under section 25 F of ID Act. Workman has no right to be regularized in service of the department. Workmen was engaged for petty works. After completion of petty works, his services could not be continued. It is reiterated that workman was not appointed or retrenchment from duty by local Officer. His engagement was as per requirement. Workman could not be deemed in service. Ist party was not regular employee of the department. His claim for equal pay is not tenable. Disengagement of workman after completion of work is covered under Section 2(oo)(bb) of ID Act. As per policy of Telecom department, no labour was appointed since 1985 on daily wage/ muster. There was no question of preparation of list of workman in compliance of Rule 77 of ID Rules 1957. 2<sup>nd</sup> party submits the claim of workman for reinstatement is not tenable.

4. Ist party workman filed rejoinder reiterating contentions in statement of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the action of the management of District Engineer(Phones), Guna in terminating the services of Shri Ramesh Kumar Jha S/o Ganeshram Jha w.e.f. 21-2-98 is justified?	Termination of workman by 2 <sup>nd</sup> party is not established. However his disengagement is legal.
(ii)	If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

#### REASONS

6. Point No.1- The term of reference pertains to legality of termination of services of workman. Workman filed affidavit of his evidence in support of his claim. However he remained absent for his cross-examination. His evidence could not be considered.
7. Application for production of documents was filed by workman was opposed by management denying custody of documents. As per order dated 7-12-2010, workman was permitted to adduce secondary evidence. Other workman not adduced secondary evidence as per the order. Zerox copy of said document produced on record are not proved by valid evidence.
8. Management filed affidavit of evidence of witness Hanumant Ramchandra supporting contentions in Written Statement tiled by management. In his cross examination, management's witness says he was not posted in office during 88 to 98. His affidavit is filed on the basis of documents. Attendance Register of casual employees was maintained. He did not see Attendance Register of year 1988 to 1998. He claims ignorance whether for engaging labour, advertisement was issued. Before engaging casual labours, the vacant post used to be declared. Management's witness was unable to tell whether vacant post during 88 to 98 in Guna office were declared. He did not see any register about engagement of casual labours after 1985. Workman was not given appointment. He denies that therefore he has stated in his affidavit that workman had not completed 240 days continuous service. Management's witness denies that workman continuously worked during 10-3-88 to 22-2-98. The certificate about working of casual labours was not granted.
9. Workman has not appeared for cross examination, he has not adduced secondary evidence. There is absolutely no evidence about his working in department or completing 240 days continuous service. Termination of services of workman in violation of Section 25-F is not established.
10. Management has contented that workman was engaged as per exigency for petty works. For reasons discussed above, I record my finding in Point No.1 that termination of Ist party workman is not established. His non-engagement is not in view of Section 25-F of ID Act.
11. Point No.2- In view of my finding in Point No.1 workman has failed to prove his termination in violation of Section 25-F of ID Act, workman is not entitled to any relief. Learned counsel for Ist party Shri A.K.Shashi relies on ratio held in case between

Jasmer Singh versus State of Haryana reported in 2015(4)MPLJ-5 & Tapash Kumar Paul versus BSNL and another reported in 2014(AIR)-SCW-5816. As Ist party has failed to establish his termination violation of Section 25-F of ID Act, ratio held in both cases cannot be applied to case at hand. Workman is not entitled to any relief. Accordingly I record my finding in Point No.1.

12. In the result, award is passed as under:-

- (1) The action of the management of District Engineer(Phones), Guna in terminating the services of Shri Ramesh Kumar Jha S/o Ganeshram Jha w.e.f. 21-2-98 is proper and legal.
- (2) Workman is not entitled to any relief.

R.B.PATLE, Presiding Officer

नई दिल्ली, 8 मार्च, 2017

**का.आ. 725.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय दूरसंचार जिला प्रबंधक झाबुआ, मध्य प्रदेश एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 7/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.11.2016 को प्राप्त हुआ था।

[सं. एल-40012/85/2009-आईआर (डीयू)]

शकुंतला पटनायक, उप निदेशक

New Delhi, the 8th March, 2017

**S.O. 725.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 7/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in relation to the Telecom District Manager, Jhabua, Madhya Pradesh and their workman, which was received by the Central Government on 02.11.2017.

[No. L-40012/85/2009-IR (DU)]

SHAKUNTALA PATNAIK, Dy. Director

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
JABALPUR**

**No. CGIT/LC/R/7/2010**

Shri Jabla Kharadi,  
S/o Shri Dhuliya, R/o Nagona,  
Udya Garh, Khandala Road,  
Jhabua (MP)

Shri Amar Singh, S/o Shri Somaji,  
R/o Vivekanand Nagar,  
Behind Gayatri Bhawan,  
Jhabua (MP)

...Workmen

**Versus**

The Telecom District Engineer,  
Bharat Sanchar Nigam Limited,  
O/o the TDE, Jhabua (MP)

...Management

**AWARD**

Passed on this 18<sup>th</sup> day of October 2016

- As per letter dated 8-1-2010 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-40012/85/2009-IR(DU). The dispute under reference relates to:  
“Whether the action of the management of BSNL in terminating the services of Shri Amar Singh and Shri Jabla Kharadi w.e.f. 13-4-99 and 10-2-99 respectively is legal and justified? If not, what relief the workman are entitled to?”
- After receiving reference, notices were issued to the parties. Workman submitted statement of claim. Case of workman is that he was continuously employed by 2<sup>nd</sup> party from 1-7-83 to 30-9-90. His services were terminated without following process of law under ID Act. The termination of Ist party workman was challenged on the ground that he completed 240 days continuous service preceding date of his termination. He was not paid retrenchment compensation. Termination of his service is illegal for violation of Section 25-F of ID Act. Management has not sought termination for retrenchment as per Rule 77 of ID (Central)Rules. Management not followed principles of last come first go as per Section 25 G,H of ID Act. On such ground, Ist party prayed for his reinstatement.
- 2<sup>nd</sup> party filed Written Statement on 31-5-11 opposing claim of workman. 2<sup>nd</sup> party contends that Ist party was not appointed by the management, no appointment letter was issued in his favour. 2<sup>nd</sup> party denied that Ist party worked under Divisional Engineer, BSNL, Distt Jhabua from 1-7-85 to 10-2-90. It is reiterated that workman was not appointed by 2<sup>nd</sup> party. There was no question of his termination by 2<sup>nd</sup> party. Ist party had not worked 240 days. 2<sup>nd</sup> party not appointed or terminated the workman therefore workman is not entitled to compensation under Section 25-F of ID Act. There was no question of violation of Section 25-G,H of ID Act. 2<sup>nd</sup> party prays for rejection of claim.



4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of BSNL in terminating the services of Shri Amar Singh and Shri Jabla Kharadi w.e.f. 13-4-99 and 10-2-99 respectively is legal and justified?	Engagement or termination of workman is not established.
(ii) If not, what relief the workman is entitled to?"	Ist party workmen are not entitled to any relief.

### REASONS

5. The term of reference pertains to legality of termination of services of workman. After filing statement of claim, Ist party workman failed to participate in reference proceeding, no evidence is filed by workman in support of their claim evidence of workman was closed on 15-4-2015.
6. Management filed affidavit of evidence of Shri Anil Kumar Bhatia. Management's witness in his affidavit of evidence has contented that Ist party workman did not work with 2<sup>nd</sup> party neither they completed 240 days continuous working. Workmen were not given appointment letters, they are not entitled for employment, they are also not entitled for retrenchment compensation.
7. Evidence of management's witness remained unchallenged. I find no reason to disbelieve unchallenged testimony of management's witness. As workman failed to adduce evidence in support of their claim, I record my finding in Point No.1 that engagement and termination of workman is not established. Accordingly I record my finding in Point No.1.
8. In the result, award is passed as under:-
- (1) Ist party workman failed to establish their engagement and termination by management.
  - (2) Workmen are not entitled to any relief.

R.B.PATLE, Presiding Officer

नई दिल्ली, 8 मार्च, 2017

**का.आ. 726.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय आयुक्त केन्द्रीय उत्पाद शुल्क और सीमा शुल्क विभाग, भोपाल एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 94/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.12.2016 को प्राप्त हुआ था।

[सं. एल-42012/62/2011-आईआर (डीयू)]

शकुंतला पटनायक, उप निदेशक

New Delhi, the 8th March, 2017

**S.O. 726.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 94/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in relation to the Commissioner, Central Excise and Customs Department, Bhopal and their workman, which was received by the Central Government on 14.12.2016.

[No. L-42012/62/2011-IR (DU)]

SHAKUNTALA PATNAIK, Dy. Director

## ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
JABALPUR

No. CGIT/LC/R/94/2011

General Secretary,  
Pratadit Karamchari Kalyan Manch,  
F-1, Tripti Vihar,  
Opp. Engineering College, Ujjain.

... Workman/Union

## Versus

The Commissioner,  
Central Excise & Customs Department,  
Central Excise Division-II,  
Bhopal (MP)

... Management

## AWARD

Passed on this 15<sup>th</sup> day of November 2016

1. As per letter dated 12-10-2011 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-42012/62/2011-IR(DU). The dispute under reference relates to:  
“Whether the action of the management of Central Excise & Customs Department in terminating the services of Shri Nandkishore Prajapati w.e.f. 29-2-2008 is legal and justified? What relief the workman is entitled to?”
2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim through General Secretary of Employees Welfare Federation. Case of Ist party is that Ist party workman was engaged as peon by Suptd. of Excise, Sehore on monthly pay Rs.150 from 1-5-97. Ist party workman as working for 4 hours in office and 4 hours at residence of Excise Suptd/ Inspector. He worked more than 240 days. His monthly pay was increased to Rs.1300. He worked more than 240 days during each of the year till his services were orally terminated on 29-2-08. That workman was not issued termination notice, retrenchment compensation was not paid. He worked under different excise inspector/ superintendents. Ist party workman claims that payments were made in bogus names. During the period January 06 to May 05 like Mohan Singh, Nandkishore etc. That working days of Ist party are narrated in para-2 of the statement of claim for the period June 06 to Feb-08. Ist party reiterates that he is covered as workman under Section 25 B. though he continuously worked for 240 days during each of the year, his services are terminated without notice, he was not paid retrenchment compensation. Termination of his service is in violation of Section 25-F of ID Act. On such ground, workman prays for his reinstatement with backwages.
3. 2<sup>nd</sup> party filed Written Statement on 18-3-13 opposing claim of workman. 2<sup>nd</sup> party reiterates that workman was not appointed on any post. Claim of Ist party workman that he was appointed on monthly pay Rs.150 since May 97 is denied. 2<sup>nd</sup> party submits that as per various orders, workman was engaged on contract basis for cleaning work during the period 1-5-97 to 26-7-97 at Sehore office. Workman was not appointed, he was not paid any pay by the department. As wages for unskilled workers at collector rate were increased, higher payment was made to workman. He not completed 240 days during any of the year. The engagement of workman was as per exigency on monthly basis. After completion of the period of engagement, the services were automatically terminated. The certificate issued to workman are about his character and not pertaining to his continuous working or appointment. The recommendation/ approval for appointment of workman was not for the sanctioned post. All adverse contentions of workman are denied. 2<sup>nd</sup> party has referred to ratio held in various cases by the Apex Court. That part time employee or daily wage employee are not entitled for regularization in service. 2<sup>nd</sup> party submits that reference be answered in its favour.
4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Central Excise & Customs Department in terminating the services of Shri Nandkishore Prajapati w.e.f. 29-2-2008 is legal and justified?	In Negative
(ii) If not, what relief the workman is entitled to?”	As per final order.

**REASONS**

5. Point No.1- Term of reference pertains to legality of termination of services of workman. The statement of claim of workman itself is clear that he was working 4 hours in office and 4 hours in residence of Inspector of Excise, Suptd. Of Excise etc.
6. Ist party workman filed affidavit of his evidence supporting his contentions in statement of claim that he was engaged on pay Rs.150/- as person by the then Excise Suptd. Dongre. He was working 4 hours in office. He worked more than 240 days during each of the year during period 1-5-97 to 29-2-08. His services are terminated without notice, retrenchment compensation is not paid to him. He worked under different Suptd., Inspector of Excise. In his cross, workman says appointment letter was not given to him. He was appointed against sanctioned post but documents are produced by him. As per Exhibit W-14, he was given appointment, he has produced document about payments made to him. His working more than 240 days was restricted from him.
7. Management's witness Shri Girish filed affidavit of evidence supporting contentions in Written Statement filed by the management. In his cross, management's witness says he doesnot know Shri R.K.Sharma. He was not posted in Sehore Excise Office during the said period. He not taken information from Suptd. Of Excise working during the period 97 to 08. All documents produced by Ist party workman are admitted by the management. Exhibit W-1 is reply filed before RLC, W-2 pertains to payment of Rs.1116/- @ Rs.58/- for 1-1- to 31-1-06, W-3 payment of Rs.1114/- for February 2006. W-4 payment of Rs.1200 for March 06, W-5 to 13 shows payment to workman for the period April 06 till March 08. Workman is shown working on part time basis. Exhibit W-31 shows workman was working in Sehore Range Office from 1-5-97 to 7-12-07. W-32 shows that Additional Commissioner had recommended regularization of part time casual employees. The name of workman appears at Sl.No.1 in the Annexure working as Farrash. W-33 shows amount of Rs. 6240/- was paid towards wages/ pay to the workman in January February 08. Document W-34 to 38 also shows payment of amount paid to workman. W-41 to 47 are copies of policy about engagement of casual labours. W-48 shows engagement on contract basis. That workman hiself is working in office, documents about contract Exhibit W-49, 50 cannot be said genuine. Exhibit W-55 payments made in which workman shown as contractor are shown since March 03 to October 08. W-53 to 55 are copies of office order. Other persons are engaged. Exhibit 56 is copy of application under RTI. The documents discussed above clearly shows that workman was engaged as part time employee on wages. Ist party workman worked more than 240 days during each of the year. His services are terminated without notice. The termination of workman is in violation of section 25-F of ID Act. For above reasons, I record my finding in Point No.1 in Negative.
8. Point No.2- In view of my finding in Point No.1 workman was engaged on part time basis. He was not appointed following any selection process, claim for reinstatement with backwages cannot be accepted. Considering Ist party was engaged on part time basis and period of working, compensation Rs.75000/- would be appropriate.
9. In the result, award is passed as under:-
  - (1) The action of the management of Central Excise & Customs Department in terminating the services of Shri Nandkishore Prajapati w.e.f. 29-2-2008 is not proper and legal.
  - (2) 2<sup>nd</sup> party is directed to pay compensation Rs.75000/- to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R.B.PATLE, Presiding Officer

नई दिल्ली, 8 मार्च, 2017

**का.आ. 727.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उप निदेशक, जवाहर नवोदय विद्यालय समिति, भोपाल एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 165/95) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02.11.2016 को प्राप्त हुआ था।

[सं. एल-42012/82/93-आईआर (डीयू)]

शकुंतला पटनायक, उप निदेशक

New Delhi, the 8th March, 2017

**S.O. 727.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 165/95) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in relation to the Dy. Director, Jawahar Navodaya Vidyalaya Samiti, Bhopal and their workman, which was received by the Central Government on 02.11.2016.

[No. L-42012/82/93-IR (DU)]

SHAKUNTALA PATNAIK, Dy. Director

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
JABALPUR**

**No. CGIT/LC/R/165/95**

Shri Manoharlal  
S/o Shri Ramchandraj,ji,  
At & PO Rampura,  
Distt. Mandsour (MP)

...Workman

**Versus**

Dy. Director,  
Jawahar Navodaya Vidyalaya Samiti,  
E/3-3, Arera Colony, Bhopal.

...Management

**AWARD**

Passed on this 3<sup>rd</sup> day of October 2016

1. As per letter dated 11-8-95 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-42012/82/93-IR(DU). The dispute under reference relates to:

“Whether the action of the management of Jawahar Navodaya Vidyalaya Samiti, Rampura, Distt. Mandsour in terminating the services of Shri Manoharlal S/o Shri Ram Chandra is legal and justified? If not, to what relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 3/1 to 3/3. Case of Ist party workman is that he was working as peon with 2<sup>nd</sup> party from 2-8-89 to 30-4-91. He was receiving pay Rs.645 per, orally he was directed to work as peon. One post of peon was vacant. There was need of peon. Principles of last come first go was not followed. His services were illegally terminated on 30-4-91 without issuing chargesheet or issuing notice. He was not paid retrenchment compensation. Oral termination of his service is illegal though he had worked more than 240 days. On such ground, workman prays for his reinstatement with backwages.

3. 2<sup>nd</sup> party filed Written Statement opposing claim of workman at Page 9/1 to 9/2. 2<sup>nd</sup> party submits that it is not covered by provisions of ID Act. 2<sup>nd</sup> party remains open 9 months in an year. It is engaged in free education, it is not engaged in manufacturing or activities earning profits. Therefore the reference is without jurisdiction 2<sup>nd</sup> party further submits that for each academic year, staff is sanctioned by Regional Office. There was no sanctioned post of peon for the year 1992-93, 1993-94. The Principal of the school engaged persons on contingency basis for particular period. The workman was engaged on contingency basis for specific period of 89 days. Understanding was given to the workman, his services could not be terminated without notice. There was no question of approval of terminating his services as he was engaged as contingent employee. It is further contented that workman had not completed 240 days continuous service, post was not sanctioned. Provisions of ID Act are not applicable.

4. Workman submitted rejoinder at Page 12/1 to 12/2 reiterating his contentions in statement of claim.

5. The award was passed by my predecessor on 10-3-99. The award was set aside by Hon'ble High Court in Writ Petition No. 1799 / 2005 and matter has been remanded.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Jawahar Navodaya Vidyalaya Samiti, Rampura, Distt. Mandsour in terminating the services of Shri Manoharlal S/o Shri Ram Chandra is legal and justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

### REASONS

7. Point No.1- The term of reference pertains to legality of termination of services of Ist party. Ist party workman filed affidavit of his evidence supporting his claim. In his affidavit, he stated that he worked with 2<sup>nd</sup> party from 2-8-89 to 30-4-91 on pay Rs. 645 per month. His services were orally terminated without notice on 30-4-91. He was not paid retrenchment compensation. He worked more than 240 days. In his cross examination, Ist party workman says he worked as peon with 2<sup>nd</sup> party during 1988 to 1992. He was doing work of cleaning, sweeping work. Appointment letter was not given to him, he was paid Rs.445 at end of the month at collector rate. He had failed 10<sup>th</sup> standard, his family consist of wife, son and daughter. His son works as Assistant of the typist. He has not produced documents about appointment of junior employees.
8. Management's witness Shri Krishna Chandra Thakur filed affidavit of evidence supporting contentions in Written Statement of management. That Ist party workman was appointed for specific period of 89 days. He had not completed 240 days continuous service during any of the year. Workman had voluntarily left work and started working in Barber shop. In his cross examination, management's witness says he is working as Principal from 17-8-2011. Workman was not issued notice before terminating his services, he was not paid retrenchment compensation. He denied that workman completed 240 days continuous service.
9. Though workman has produced zerox copies of documents pertaining to his appointment, no valid evidence is adduced to prove the same. Evidence of workman is not corroborated that he completed more than 240 days working preceding termination of his services. Therefore action of the management in terminating the services of workman cannot be said in violation of Section 25 of ID Act. Therefore I record my finding in Point No.1 in Affirmative.
10. In the result, award is passed as under:-
- (1) The action of the management of Jawahar Navodaya Vidyalaya Samiti, Rampura, Distt. Mandsour in terminating the services of Shri Manoharlal S/o Shri Ram Chandra is legal and proper.
- (2) Workman is not entitled to any relief.

R.B. PATLE, Presiding Officer

नई दिल्ली, 8 मार्च, 2017

**का.आ. 728.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कार्यकारी अधिकारी निदेशक, भेल, भोपाल एवं उनके कर्मचारी के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 54/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.02.2017 को प्राप्त हुआ था।

[सं. एल-42011/171/2012-आईआर (डीयू)]

शकुंतला पटनायक, उप निदेशक

New Delhi, the 8th March, 2017

**S.O. 728.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 54/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in relation to the Executive Director, BHEL, Bhopal and their workman, which was received by the Central Government on 15.2.2017.

[No. L-42011/171/2012-IR (DU)]

SHAKUNTALA PATNAIK, Dy. Director

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
JABALPUR****No. CGIT/LC/R/54/2013****PRESIDING OFFICER: SHRI R.B.PATLE**

General Secretary,  
BHEL Karmchari Trade Union,  
37, N-2, C-Sector, Piplani, Bhopal (MP)

...Workman/Union

**Versus**

Executive Director,  
Bharat Heavy Electricals Ltd., Piplani,  
Bhopal (MP)

...Management

**AWARD**Passed on this 3<sup>rd</sup> day of January 2017

1. As per letter dated 5-3-2013 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-42011/171/2012-IR(DU). The dispute under reference relates to:

“ Whether the dispute raised by BHEL Karmchari Trade Union, Bhopal is covered under Section 2K and Schedule V of the ID Act, 1947? Whether BHEL Karmchari Trade Union, Bhopal is entitled for two seats in the joint committee of BHEL?”

2. After receiving reference, notices were issued to the parties. Even after issuing notices, the Union didnot participate in the proceeding, no statement of claim is filed. Ist party is proceeded exparte on 2-12-2015.

3. IInd party management also not filed Written Statement. From conduct of the parties, it is clear that the parties are not pursuing or participating in the dispute.

4. In the result, award is passed as under:-

“ Reference is disposed off as No Dispute Award.”

R.B. PATLE, Presiding Officer

नई दिल्ली, 8 मार्च, 2017

**का.आ. 729.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार निदेशक (ड्रिलिंग), भारतीय भूगर्भीय सर्वेक्षण, कोलकाता एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 35/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.12.2016 को प्राप्त हुआ था।

[सं. एल-42011/22/2010-आईआर (डीयू)]

शकुंतला पटनायक, उप निदेशक

New Delhi, the 8th March, 2017

**S.O. 729.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 35/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in relation to the Director (Drilling), Geological Survey of India, Kolkata and their workman, which was received by the Central Government on 14.12.2016.

[No. L-42011/22/2010-IR (DU)]

SHAKUNTALA PATNAIK, Dy. Director

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
JABALPUR****No. CGIT/LC/R/35/2010**

Shri Manoj Kumar,  
S/o Shri Durga Prasad,  
Gram Semriha, PO Amiliha,  
Umaria,

Shri Pramod Kumar Pandey,  
S/o Shri Late Har Prasad,  
Gram Katmkona, PO Burhar, Shahdol

Shri Shiv Kumar Pandey S/o Late Anant Pandey,  
Pali Road, Near Barrier, Vill.Chandaniya,  
PO Amiliha, Umaria (MP)

...Workmen

**Versus**

The Director (Drilling),  
Geological Survey of India,  
Coordination Coal Drilling Division,  
Bhu Vigyan Bhawan, DK-6,  
Karunmai Salt Lake City, Kolkata.

...Management

**AWARD**Passed on this 29<sup>th</sup> day of November 2016

1. As per letter dated 31-5-2010 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-42011/22/2010-IR(DU). The dispute under reference relates to:  
“Whether the action of the management of the Drilling unit of Geological Survey of India in terminating the services of S/Shri Manoj, Shiv Kumar Pandey and Pramod w.e.f. 1-1-2006 is legal and justified? If not, to what relief the workmen are entitled to?”
2. After receiving reference, notices were issued to the parties. Ist party workmen submitted statement of claim on 7-7-2010. Case of Ist party workman No.1 to 3 is that they are workmen under Section 2(s) of ID Act. They were appointed by 2<sup>nd</sup> party in its Coal Drilling Unit No.455 at Budhi Mai, Sohagpur Coalfield. They were paid monthly salary and rate fixed by District Collector, time to time. Their muster roll was maintained by the management. To deny benefit of continuous service, muster roll was manipulated. Workman claims that Ist party No.1 was appointed on 1-1-02 on post of clerk (Account Assistant). Ist party No.2 Shri Pramod Kumar Pandey was appointed by the then STA(D) Incharge with the approval of non-applicant on 1-9-01 on the post of Drill Machine Operator. Ist party workman No.3 Shri Shiv Kumar Pandey was appointed by the then STA(D) In charge with the approval of non-applicant. That there are many units of Non-applicant functioning all over India under the control of the Union of India, Ministry of Mines and some of them functions at Sohagpur Coal field. There are six units existing in 2006. 2<sup>nd</sup> party shifted Unit No. 455 situated at Budhi Mai to Kosala(Orissa) and remaining five units are still working smoothly.
3. Ist party workman further contends that Coal Drilling and Survey in which applicants were engaged by the non-applicant was regular work of the non-applicant and there were about 100 workers were engaged by 2<sup>nd</sup> party. No notice was given to them calling their options. That they completed more than 240 days continuous service during each of the year. Notice was not issued for terminating their services under Section 25-F, 25-AA, 25-AAA etc. Their services are terminated in violation of Section 25-F, H,N of ID Act. On such ground, workman claims reinstatement with backwages.

4. 2<sup>nd</sup> party filed Written Statement opposing claim of Ist party workman. 2<sup>nd</sup> party submits that Geological Survey of India is engaged in coal exploration through various drilling camps spread all across the country. The establishment of drilling camp is purely temporary in nature and camp have to be shifted as per geological requirement and programs of Government. That there were 10-15 regular employees posted in camp besides that 10-15 casual labours are engaged on daily wage basis for day to day job. . the payments of casual labours are made once in a month as per the working days at daily wage rate. Drilling camp exists temporarily at a particular location and as per the record Unit 455 was shifted to Kosala (Orissa) long back from Shahdol. As per record, Unit 455 has been winded up and records are not available. Therefore it is not possible to give details of the engagement of workman. The Ist party workman might have been engaged on daily wage basis as per requirement of work. However Unit No. 455 was shifted to Kosala (Orissa) long back from Shahdol (MP). Their services were purely temporary on daily wages basis. On winding up of Unit No.455, services of daily wage employees were dispensed with. There is no illegality on behalf of management. That Geological Survey of India is not called as Industry under Section 2(j) of ID Act as per judgment by Hon'ble Hyderabad High Court in Writ Petition 323/97.
5. 2<sup>nd</sup> party reiterates it is not covered as an Industry. The contentions of Ist party workman that they were engaged for regular work is denied. 2<sup>nd</sup> party submits that Ist party workman not completed 240 days continuous working. On such ground, 2<sup>nd</sup> party prays for rejection of claim.
6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the establishment of 2 <sup>nd</sup> party is covered as Industry under Section 2(j) of ID Act?	In Affirmative
(ii) Whether the action of the management of the Drilling unit of Geological Survey of India in terminating the services of S/Shri Manoj, Shiv Kumar Pandey and Pramod w.e.f. 1-1-2006 is legal and justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

### **REASONS**

7. Point No.1- 2<sup>nd</sup> party has contented that Geological Survey of India is not an industry under Section 2 (j) of ID Act. However the Written Statement is not clear w.r.t. activities carried in establishment of 2<sup>nd</sup> party. Evidence of all the 3 Ist party workmen is devoted that they were working as Driver, Drill Machine Operator and post of clerk. In cross examination of Ist party workman, nothing was suggested about the activities carried in establishment of 2<sup>nd</sup> party.
8. Affidavit of evidence of management's witness Ishtaq Ahmed is devoted w.r.t. drilling camps. The details of the activities carried by 2<sup>nd</sup> party are not given. Counsel for Ist party produced copy of judgment in W.P.No.323/1977 in case between Geological Survey of India Employees Association and two others versus RLC, Hyderabad and Director General of Geological Survey of India dated 19-6-78. It was held under such judgment that Geological Survey of India is not an Industry within the meaning of Section 2(j) of the Act.
9. Learned counsel for Ist party submitted written notes of argument pointing out my attention to ratio held in case between Bangalore Water Supply and Sewerage Board versus A.Rajappa reported in AIR-1978-SC-548 w.r.t. industry. The text of the judgment is not available. However it is known that only sovereign functions of State are excluded from definition of Industry.
10. 2<sup>nd</sup> party has not adduced evidence as to which sovereign function it was discharging. It appears judgment by Allahabad High Court may be prior to judgment in Bangalore Water Supply case. Supreme Court judgment needs to be followed. There is no evidence to hold that 2<sup>nd</sup> party is discharging sovereign functions of State . Therefore I hold that 2<sup>nd</sup> party is covered as an Industry. The issue is answered in Affirmative.
11. Point No.2- The term of reference pertains to legality of termination of workman. All the 3 workmen filed affidavit of their evidence reiterating that they were continuously working more than 240 days since their respective engagement 1-9-01, 1-11-01,1-1-02. Shri Shiv Kumar Pandey in his cross says he was temporarily engaged in drill camp, he was paid wages for working days, appointment letter was not given to him. He admits that drilling work at Umaria was completed.



12. Shri Pramod Kumar Pandey in his cross says he received education upto 7<sup>th</sup> standard. He denies that he was temporarily engaged in drilling. Appointment letter was given to him. The drilling work was for specific period. In drilling camp, temporary casual employees were engaged. The work at Umaria is completed. He was paid wages for his working days.
13. Shri Manoj Kumar in his cross says appointment letter was not issued to him, his name was not sponsored through Employment Exchange. He denies that Drilling work used to be of certain period. Drilling work at Umaria is not continued. He denies that he was paid wages for his working days. He explained that he was getting monthly pay he denies that he was engaged on daily wages. From evidence of Manoj Kumar, documents Exhibit W-1 to W-5 are admitted in evidence. Exhibit W-1,2,3 office order dated 1-11-05, Ist party workmen were directed to proceed to Kosala (Orissa) along with departmental truck. Exhibit W-4 is copy of log book for the period 7-11-05 till 2-3-06. Above documents corroborates evidence of Ist party workman. Documents Exhibit W-5 are copies of payment sheets corroborates evidence of workman that they were continuously working more than 240 days during March 2004 to July 2005. Ist party workman had submitted application for production of document. 2<sup>nd</sup> party failed to produce documents. Ist party workman produced documents which they could obtain. Management has admittedly engaged workman as casual labours. The record of payment of wages must be in custody of 2<sup>nd</sup> party. However the record is not produced therefore evidence of Ist party workman deserves to be accepted. The services of Ist party workmen were terminated without notice, retrenchment compensation was not paid to them. Termination of their service is illegal for violation of Section 25-F of ID Act. For above reasons, I record my finding in Point No.2 in Negative.
14. Point No.3- In view of my finding in Point No.2 termination of workman is illegal, question remains for consideration whether they are entitled for reinstatement with backwages.
15. Learned counsel for 2<sup>nd</sup> party on the point relies on ratio held in case between-

Tapash Kumar Paul versus BSNL and another reported in 2014(15)SCC-313. Their Lordship dealing with the relief of reinstatement/ compensation in lieu of reinstatement held that compensation may be awarded (i) where industry is closed, (ii) where employee has superannuated or is going to retire shortly and no period of service is left to his credit, (iii) where workman has been rendered incapacitated to discharge duties and cannot be reinstated, and (iv) when he has lost confidence of management to discharge duties.

In present case, Unit No. 455 is already woundup and shifted to Kosala (Orissa). Workmen were engaged on daily wages without following any kind of selection process. Considering period of engagement, compensation Rs.75,000/- to each of the workmen is proper. Accordingly I record my finding in Point No.3.

16. In the result, award is passed as under:-

- (1) The action of the management of the Drilling unit of Geological Survey of India in terminating the services of S/Shri Manoj, Shiv Kumar Pandey and Pramod w.e.f. 1-1-2006 is not legal.
- (2) 2<sup>nd</sup> party is directed to pay compensation Rs.75000/- to each of the workmen.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R.B.PATLE, Presiding Officer

नई दिल्ली, 8 मार्च, 2017

**का.आ. 730.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सहायक कार्यकारी अभियंता, सीपीडब्ल्यूडी (सिविल), जबलपुर एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 84/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.01.2017 को प्राप्त हुआ था।

[सं. एल-42012/12/2011-आईआर (डीयू)]

शकुंतला पटनायक, उप निदेशक

New Delhi, the 8th March, 2017

**S.O. 730.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 84/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in relation to the Assistant Executive Engineer, CPWD (Civil), Jabalpur and their workman, which was received by the Central Government on 04.01.2017.

[No. L-42012/12/2011-IR (DU)]

SHAKUNTALA PATNAIK, Dy. Director

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM -LABOUR COURT,  
JABALPUR****No. CGIT/LC/R/84/2011**

Shri Rakesh Saini,  
S/o Shri Thakur Das Saini,  
H.No.1226, Gangasagar, Beside Old MPEB,  
Garha Road , Jabalpur

...Workman

**Versus**

Assistant Executive Engineer,  
CPWD(Civil), Survey of India colony,  
Vijay Nagar, Jabalpur.

...Management

**AWARD**Passed on this 8<sup>th</sup> day of December, 2016

1. As per letter dated 6-9-2011 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-42012/12/2011-IR(DU). The dispute under reference relates to:

“Whether the action of the management of Assistant Executive Engineer, CPWD(Civil), Vijaynagar, Jabalpur and Executive Engineer, CPWD(Civil), Bhopal in terminating the services of Shri Rakesh Saini S/o Shri Thakur Das Saini w.e.f. 13-12-2005 after taking work as Driver/ Mason from 1996-97 to 2005 is legal and justified? What relief the workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim. Case of workman is that he was engaged by 2<sup>nd</sup> party No.3 Assistant Engineer , CPWD Jabalpur in 1996-97 as Driver by oral order. After his engagement, he worked with devotion. He continuously worked as Driver cum Mason till 12-12-05. When he claimed extra wages for extra work performed during holidays, 2<sup>nd</sup> party No.3 was annoyed and orally terminated his services from 13-12-05. His services were terminated without notice. He was not paid retrenchment compensation. Any enquiry was not conducted against him. Termination of his service is illegal, retrenchment under Section 2(oo) of ID Act. Workman reiterates he completed more than 240 days during each of the calendar year as Driver/ Mason he is covered as employee under Section 25 B of ID Act, he is entitled to protection of Chapter V of ID Act. His attendance was marked in the department. That similarly situated employees were engaged by department on work chart basis. He filed OA No. 786/96 which was finally decided on 10-1-97. Respondents were directed to treat the casual labours and regularized their services within 60 days. That the department engaged him as Driver/Mason. In pursuance of judgment in OA 786/96, he should have been regularized on the post of Driver. Termination of his service is violative of Article 14 of the constitution. He claims to be unemployed after termination of his services. On such ground, workman prays for his reinstatement with full backwages.
3. 2<sup>nd</sup> party filed Written Statement opposing claim of Ist party. 2<sup>nd</sup> party denies engagement of Ist party by 2<sup>nd</sup> party No.3 in 1996-97. That there is no rule or procedure by which a person can be engaged by oral order. 2<sup>nd</sup> party submits that the workman was never engaged as Driver. There was no question of employment on holidays, there was no question of paying additional remunerations. It is denied that workman was continuously working till 12-12-05. 2<sup>nd</sup> party reiterates that workman was never engaged in any work. There was no question of his termination. It is further submitted that workman was making efforts that he was appointed on particular post and terminated from service. There was no question of conducting departmental enquiry or retrenching workman. 2<sup>nd</sup> party denies that workman had worked for more than 240 days during any of the calendar years as Driver/ Mason. Workman is not covered under Section 25 B of ID Act. He is not entitled to protection of Chapter V of the Act. The attendance of workman was not maintained in the Attendance Register of the department. W.r.t. Judgement in OA 786/96, it is submitted that the judgment cannot be applied to the case as

the matter was decided considering the facts in the matter. There is no permanent vacancy of Driver in the department. It is denied that termination of workman is violative of Article 14 of the constitution. Claim of Ist party workman is not tenable.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Assistant Executive Engineer, CPWD(Civil), Vijaynagar, Jabalpur and Executive Engineer, CPWD(Civil), Bhopal in terminating the services of Shri Rakesh Saini S/o Shri Thakur Das Saini w.e.f. 13-12-2005 after taking work as Driver/ Mason from 1996-97 to 2005 is legal and justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

### REASONS

5. The term of reference pertains to legality of termination of services of workman. Workman filed affidavit of his evidence supporting his contentions in statement of claim that he was engaged as Driver/ Mason by 2<sup>nd</sup> party No.3 during 1996-97. He worked till 12-12-05. His attendance was marked in the register. He produced attendance register for the year 1997 to 2004. He worked more than 240 days during each of the year. When he claimed additional wages for working on holiday. His services were orally terminated without notice. Other similarly situated workmen were regularised as per judgment by CAT in OA. From evidence of Ist party, documents Exhibit W-2 are admitted in evidence. 2<sup>nd</sup> party failed to cross examine workman. His evidence remained unchallenged. 2<sup>nd</sup> party has not adduced evidence. The documents Exhibit W-1 shows 824 working days in May 1998. Document Exhibit W-2 Attendance Register shows Ist party workman was working with 2<sup>nd</sup> party from October 97 to June 04 as Mason. On application of Ist party, 2<sup>nd</sup> party was directed to produce Attendance Register for 1997 to 2004. 2<sup>nd</sup> party has failed to produce those documents.
6. From evidence of Ist party, workman remained unchallenged about his working from 1997 till 12-12-05. Therefore I donot find reason to disbelieve his evidence that he completed 240 days continuous service during the period 1997 to 12-12-05. Evidence of Ist party that his services are terminated without notice retrenchment compensation was not paid to him remained unchallenged. The evidence on record shows that workman was terminated without notice, retrenchment compensation was not paid to him is in violation of Section 25-F of ID Act. For above reasons, I record my finding in Point no.1 in Negative.
7. Point No.2- In view of my finding in Point No.1, termination of services of workman is in violation of Section 25-F of ID Act, question remains for consideration is whether Ist party workman is entitled for reinstatement with backwages.
8. Learned counsel for workman Shri Vijay Tripathi relied on ratio held in case between- Jasmer Singh versus State of Haryana and another reported in 2015(4)SCC-458. Their Lordship upheld the award for reinstatement with full backwages by Industrial Tribunal cum Labour Court observing that since the order of termination is void-ab-initio, workman is entitled to get backwages.
- Reliance is also placed on ratio held in case between Tapash Kumar Paul versus BSNL reported in 2014(5)SCC-313. Their Lordship dealing with violation of Section 25-F of ID Act held employee entitled to reinstatement with full backwages since in absence of full backwages, employee would be distressed and suffer punishment for no fault of his own in absence of proof of gainful employment. Their Lordship also laid down grounds when compensation in lieu of reinstatement can be granted- (i) where industry is closed, (ii) where employee has superannuated or is going to retire shortly and no period of service is left to his credit, (iii) where workman has been rendered incapacitated to discharge duties and cannot be reinstated and or (iv) when he has lost confidence of management to discharge duties.

Management has not adduced evidence on any of those aspects. Considering the ratio held in above cited case, as services are terminated in violation of Section 25-F of ID Act, workman is entitled to reinstatement with full backwages. Accordingly I record my finding in Point No.2.

9. In the result, award is passed as under:-

- (1) The action of the management of Assistant Executive Engineer, CPWD in terminating the services of Shri Rakesh Saini S/o Shri Thakur Das Saini w.e.f. 13-12-2005 is not proper and legal.
- (2) 2<sup>nd</sup> party management is directed to reinstate workman with full back wages.

Amount as per above award shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R.B.PATLE, Presiding Officer

नई दिल्ली, 8 मार्च, 2017

**का.आ. 731.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जिला प्रबंधक, बीएसएनएल, मध्य प्रदेश एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 68/08) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.1.2017 को प्राप्त हुआ था।

[सं. एल-40012/10/2008-आईआर (डीयू)]

शकुंतला पटनायक, उप निदेशक

New Delhi, the 8th March, 2017

**S.O. 731.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 68/08) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in relation to the District Manager, BSNL, Madhya Pradesh and their workman, which was received by the Central Government on 04.01.2017.

[No. L-40012/10/2008-IR (DU)]

SHAKUNTALA PATNAIK, Dy. Director

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/68/08

Shri Mohammed Ameen,  
S/o Late Munshi Mohammed,  
R/o Sankat Mochan Pahariyan,  
Ward No.14, Chhattarpur (MP)

...Workman

#### Versus

District Manager,  
Bharat Sanchar Nigam Ltd.,  
Chhattarpur (MP)

...Management

**AWARD**

Passed on this 14<sup>th</sup> day of December, 2016

1. As per letter dated 2-6-2008 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-40012/10/2008-IR(DU). The dispute under reference relates to:  
 "Whether the action of the management of District Manager, BSNL, Chhatarpur in terminating the services of their workman Shri Mohammed Ameen w.e.f. September 2007 is legal and justified? If not, to what relief the workman is entitled to?"
2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim on 18-10-2010. Case of Ist party workman is that telegraph office at Mahal Tehsil in Chhatarpur was established in 1989. Since inception of said office, he was employed by Competent authority as part time waterman after following procedure. His name was called from Employment Exchange. Workman rendered service continuously more than 240 days every year. Initially he was paid Rs.10 per day for 4 hours working. The wages were increased to Rs.12 per day. Ist party further contends that since 5 years, his wages were stagnated to Rs.10 per day. Looking to the collector rate, he should have been paid Rs.505 per day. He had submitted representations for enhancing wages but his request was not considered. BSNL issued directions dated 16-10-2000 to TDM & TDE Chhatarpur for conversion of part time casual labour working 4 hours per day into full time casual labours. That workman got knowledge from department. Immediately he submitted representation on 29-11-2000 for his conversion from part time labour to full time labour in view of approval dated 6-10-99 & letter dated 29-9-00.
3. Ist party workman further submits that telegraph officer Shri Kashyap declined to provide details of his service called by the department. Consequently workman was deprived full time casual labour status. The approach of the department is arbitrary. On 31-7-02, workman had submitted representation claiming permanent status in Group D post. Certificate of experience of 5 years and relevant documents were submitted. His representation was not considered by the authorities causing injustice to him. That he was continuously working till August 2007. Management dispensed his services from September 2007 without notice. He was not paid retrenchment compensation. Termination of his service is in violation of section 25-F of ID act. He had rendered more than 240 days continuous service during each of the year is covered as employee under section 25-F,G,H of ID Act. On such ground, workman prays for his reinstatement with backwages.
4. 2<sup>nd</sup> party filed Written Statement opposing claim of workman. 2<sup>nd</sup> party submits that workman was never employed by the management as part time waterman. 2<sup>nd</sup> party denies that workman had continuously worked more than 240 days in each calendar year. The certificate issued by Telegraph master is not valid as the same was issued by incompetent authority. 2<sup>nd</sup> party denies that workman was paid wages Rs.10 per day/Rs.250 per month. It is reiterated that workman was never engaged by management of 2<sup>nd</sup> party. There is no question of converting his service from part time labour to full time labour. It is denied that Incharge Officer had declined to provide details of the service sought by the department. The contentions of workman that he was deprived of full time status. 2<sup>nd</sup> party denies that workman had worked for 240 days during each of calendar year and rendered continuous service provided under Section 25 B of ID Act. Violation of section 25-F, G,H of ID act is also denied. 2<sup>nd</sup> party submits that relief prayed by workman cannot be allowed.
5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of District Manager, BSNL, Chhatarpur in terminating the services of their workman Shri Mohammed Ameen w.e.f. September 2007 is legal and justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

**REASONS**

6. The term of reference pertains to legality of termination of services of Ist party workman. Workman filed affidavit of his evidence stating that Telegraph Office at Mahal tehsil was established in October 1989 since inception of said office, he was employed as part time waterman. He rendered continuous service for more than 240 days during each calendar year. He was paid wages Rs.10 per day which were increased to Rs.12 per day

for 4 hours duty. His wages were stagnated at same rate for 5 years as per collector rate, he should have been paid Rs.505. That as per direction dated 16-10-00, conversion of part time casual labours working 4 hours or more per day as casual labour were issued. He submitted representation dated 29-11-2000, 31-7-00 were not considered. He was not granted status of permanent casual labour. His services were terminated without notice. Compensation in lieu of notice was not paid to him. In his cross examination, workman says post on which he was working was not advertised. He not submitted application to the office of 2<sup>nd</sup> party. He was called by officer, he received appointment letter from office of 2<sup>nd</sup> party but same is not produced on record. Workman explained that appointment letter was taken back by shri Kashyap. He was working as waterman filling drinking water. He was paid wages by Mr. Kashyap obtaining his signatures. Wages were not paid to him by accounts office. He denies that appointment letter was not received by him. He denied that he was not working in office of 2<sup>nd</sup> party.

7. Management's witness Shri B.K.Pateria filed affidavit of his evidence. He denied engagement of workman as part time waterman by the management. Workman was not employed for 240 days. Certificate was issued by telegraph master, he was not competent to issue certificate. The certificate is not valid. Ist party workman was never employed. There was no question of giving him permanent status. Violation of section 25-F of ID Act is denied. In Para 8 of his affidavit, it is stated that management illegally retrenched him in September 2007. Workman was never employed by the management. In his cross examination, management's witness says in October, 1989, no body was working as permanent waterboy in the office. In 1989, there was no sanctioned post of waterman in telegraph office. He denies that workman was engaged as waterman in 1989. The certificate about working shown to him was not issued by the department. He denies that workman continuously worked more than 240 days. In his further cross, management's witness says he had seen personal file, vouchers, correspondence of Ist party workman. He can produce documents in the case. Workman was not paid retrenchment compensation as he was not regular employee. The list of daily wage employee was not prepared as no daily wage employee were engaged by 2<sup>nd</sup> party. He was unable to tell whether after termination of workman, other persons were engaged as waterman. Though management's witness was shown his readiness to produce the documents- vouchers etc, after application for production submitted by Ist party, directions were issued to 2<sup>nd</sup> party for production of documents, documents are not produced. It is clear from evidence that management had suppressed the material documents which were seen by management's witness. When material documents are suppressed by management, evidence of Ist party workman that he was continuously working more than 240 days deserves to be accepted. As per evidence of management's witness, workman was not served with notice of termination, retrenchment compensation was not paid to him.

8. Shri Pranay Choubey relied on ratio held in

Sub Divisional Engineer versus Sarang Maratrao Gumule by Hon'ble Bombay High Court. In para 22 of the judgment, his Lordship dealing with question how workman is expected to discharge this burden? Does it follow from the observations in the judgments quoted above (for the sake for convenience) that a workman is expected to tender a particular quantum of evidence, as to examine a particular number of witnesses in support of his plea. The Evidence Act which doesnot apply to matter under the Industrial Disputes Act too doesnot lay down that any particular number of witnesses must be examined to prove a particular fact. Just as it would be futile to expect an employer to prove a non existent factn namely that a workman had not worked for 240 days it would be futile to expect a workman to produce non existent evidence. The best evidence rule would mandate that if the workman has in his possession any documentary evidence which would support his word on oath, he must produce such evidence and if he is not doing so, it would result in discrediting his work. The observations of the Apex Court that in addition to his own word, the workman must put in something more has to be read with this caveat.

His Lordship also referred to Para 17 of the judgment in R.M.Yellati case and observed this burden is discharged only upon workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence both oral and documentary. In cases of termination of services of daily waged earners, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Workman can only call upon the employer to produce before the court the nominal muster roll.

In present case, management's witness shown his readiness to produce documents. However even after order for production of documents, same are not produced. Evidence of workman deserves to be accepted.

9. Shri Pranay Choubey also relies on ratio held in case of Director, Fisheries Terminal Division versus Bhikubhai Meghajibhai Chavda and judgment in Satbir Singh versus Presiding Officer, Industrial Tribunal Cum Labour Court, Panipat in support of his argument on above point. As management has failed to produce documents and

workman was not served with notice, no retrenchment compensation is paid. Termination of services of Ist party workman is illegal for violation of Section 25-F of ID Act. Point No.1 is answered in Negative.

10. Point No.2- In view of my finding in Point No.1 termination of Ist party workman is illegal, question remains for consideration whether workman is entitled for reinstatement with backwages. Evidence of Ist party workman that he was unemployed after termination of his services remained unchallenged. Evidence of management's witness is silent about gainful employment of Ist party workman.
11. Learned counsel for Ist party Shri Pranay Choubey relies on ratio held in case between

Tapash Kumar Paul versus BSNL and another. Said judgment is in the matter of BSNL itself. Their Lordship have considered in detail when compensation instead of reinstatement is to be granted, where the industry is closed, (ii) where the employee has superannuated or going to retire shortly and no period of service is left to his credit, (iii) where the workman has been rendered incapacitated to discharge the duties and cannot be reinstated and or (iv) when he has lost confidence of the management to discharge duties. In concurring with the judgment, his Lordship considering ratio held in case of Jagbir Singh versus Haryana State Agriculture Mktg Board and another, BSNL and others versus Kailash Narayan Sharma, Deepali Gundu Surwase versus Kranti Junior Adhyapak Mahavidyalaya and others, Hindustan Tin works (P)Ltd versus employees of M/S Hindustan Tin Works Pvt. Ltd, Surendra Kumar Verma and others versus CGIT Cum Labour Court, New Delhi and another concluded in the light of decision of this court in Deepali gundu's case which is correctly relied upon higher bench decisions of this Court in Surendra Kumar Verma's case and Hindustan tin Works Pvt Ltd, I am of the opinion that the appellat herein is entitled to reinstatement with full backwages since in the absence of full backwages, the employee will be distressed and will suffer punishment for no fault of his own.

Shri Pranay Choubey also relied on judgment dated 19-8-2016 in Writ Petition No. 20564/2015 . His Lordship considering ratio held in Tapash Kumar case wherein it is held. Therefore in the light of the decision of this Court in Deepali Gundu's case which has correctly relied upon higher bench decisions of this Court in Surendra Kumar Verma's case and Hindustan Tin Works Pvt. Ltd, I am of the opinion that the appellat herein is entitled to reinstatement with full backwages since in the absence of full backwages, the employee will be distressed and will suffer punishment for no fault of his own. The Writ Petition was dismissed.

12. The counsel for management Shri M.P.Kapoor has not pointed out any contrary ratio why the workman should not be reinstated with backwages. As ratio held in Tapash Kumar was in the matter of BSNL itself, I donot find any reason to take different view. Ist party workman deserves reinstatement as part time waterman with backwages. Accordingly I record my finding in Point No.2.
13. In the result, award is passed as under:-
- (1) The action of management of District Manager, BSNL, chhatarpur in terminating the services of their workman Shri Mohammed Ameen w.e.f. September 2007 is not legal and proper.
  - (2) 2<sup>nd</sup> party is directed to reinstate workman Shri Mohammed Ameen as part time waterman with full backwages.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization

R.B.PATLE, Presiding Officer

नई दिल्ली, 8 मार्च, 2017

**का.आ. 732.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ सं. 44/1999) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04.03.2017 को प्राप्त हुआ था।

[सं. एल-22012/214/98-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 8th March, 2017

**S.O. 732.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 44/1999) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 04.03.2017.

[No. L-22012/214/98-IR (CM-II)]

RAJENDER SINGH, Section Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

**PRESENT :** Sri Pramod Kumar Mishra, Presiding Officer

**REFERENCE NO. 44 OF 1999**

#### **PARTIES :**

The management of Victoria West Colliery of M/s. B.C.C.L.

v/s

Sri Bal Mukund Sharma

#### **REPRESENTATIVES :**

For the management : Sri P. K. Das, Learned Advocate

For the union (Workman) : Sri S. K. Pandey, Union Representative

Industry: Coal

State : West Bengal

Dated : 16.02.2017

### **AWARD**

In exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter **No. L-22012/214/98-IR(CM-II)** dated 22.04.1999 has been pleased to refer the following dispute for adjudication by this Tribunal.

### **SCHEDULE**

“Whether the action of the management of Victoria West Colliery in denying the regularisation of Sh. Balmukund Sharma, Apprentice Fitter is justified? If not, to what relief is the workman entitled? ”

1. Having received the Order **No. L-22012/214/98-IR(CM-II)** dated 22.04.1999 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference Case No. **44 of 1999** was registered on 07.06.1999. Accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned, directing them to appear in the court, on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned. Both the parties appeared in the Tribunal, through their representative.

2. The workman Sri Bal Mukund Sharma has stated in his written statement that he was initially offered employment as Underground Loader under Clause 10:4:2 of NCWA-II / 09.04.2002 of NCWA-III in place of his



father-in-law. Vide approval No. BCCL/PA/VI/3(8)/A-XIII/117/90/26871-73 dated 16.06.1990 and he joined on 24.10.1990. He was subsequently re-designated as Fitter Apprentice on the ground that he was a matriculate and accordingly he reported for duty as Fitter Apprentice at Basantimata Colliery on 10.09.1991 in Category - I vide Headquarter letter no. BCCL/PAVI/3(8)/Ar-XII/117-91/26568 dated 28.08.1991. He worked as Fitter Apprentice from 10.09.1991 to February, 1995. He was transferred in the same capacity to the Area Workshop in March, 1993. There he worked up to May, 1995. He was again transferred from Area Workshop to Victoria West Colliery of M/s. Bharat Coking Coal Limited as Fitter Apprentice where he worked from June, 1995 to 03.06.1999. There after he was stopped from duty. He had completed 3 years of his prescribed period of training in September, 1994. As per terms of offer he was to impart training by the management for a period of 3 years. But he was never sent for the said training, by the management, for the reason best known to the management. He was called for training at E.M.T.I., Dhansar, vide Vice Principal of E.M.T.I., Dhanbad's letter no. 2817 dated 29.01.1994 and 09.04.1994, but he was not spared for the said training. As such he continued to work as per direction and control of the Agent wherever he was posted. Because he has completed the prescribed period of training of 3 years in September, 1994, therefore as per terms of offer he was to be upgraded or to be promoted as Fitter in Category - IV. But this was denied to him for reason best known to management. It is surprising that till date he has completed 11 years of service, but he is still designated as Apprentice Fitter and still getting wages of Category - I, which is the lowest grade in daily rated grades. He has been stagnating on the same post in the same grade for last 10 years, whereas many persons junior to him have been promoted and upgraded which is well known to the management. While working at Victoria West Colliery of M/s. Bharat Coking Coal Limited he was allowed and authorized to work as Lamp Issue Clerk in Clerical Grade - III w.e.f. 03.01.1996 vide authorization dated 03.01.1996 issued by the then Agent under his own signature, the copy is attached in the file. Accordingly Sri Bal Mukund Sharma continued to work as Lamp Issue Clerk which is a Clerical Grade - III w.e.f. 03.01.1996. Although he was authorized to work as Lamp Issue Clerk but he was getting wages of Category - I only. Though as per rules he was entitled to the difference of pay of the existing grade and the basic of Clerical Grade. But this fact is denied by the management. The workman has prayed that the Tribunal may direct the Management of Victoria West Colliery of M/s. Bharat Coking Coal Limited / Chief General Manager of Chanch-Victoria Area of M/s. Bharat Coking Coal Limited to regularize Sri Bal Mukund Sharma Apprentice Fitter as Lamp Issue Clerk in Clerical Grade - III with retrospective effect i.e. from 03.01.1996 and re-fix his pay in terms of National Coal Wage Agreement - V & VI and to pay arrears arising out of this regularization.

3. The Agent of Victoria West Colliery of M/s. Bharat Coking Coal Limited has filed written statement. He has alleged that the reference is misconceived. The concerned workman is designated as 'Fitter Apprentice' in Category - I. As per terms of his employment he is discharging the duty of Apprentice Fitter in Victoria West Colliery of M/s. Bharat Coking Coal Limited. The Lamp Issue Clerk in Clerical Grade is completely different post in different category. The job of Lamp Issue Clerk is Monthly Rated Job whereas the Fitter Apprentice is a Time Rated Job. The job of Lamp Issue Clerk has been categorically mentioned in the specified scheme which is in force in the Coal Industry and as such the claim of the workman for his regularization to the post of Lamp Issue Clerk is completely unjustified and illegal claim. Since nationalization of Coal Mines there is no such post at West Victoria Colliery of M/s. Bharat Coking Coal Limited as Lamp Issue Clerk as per provisions of Mines Acts and Rules. The job of Lamp Issue Clerk is all along being done by Register Keeper of the colliery. The concerned workman never performed the job of Lamp Issue Clerk. Regularization in a particular post depends upon the availability of post and vacancy. Merely working on a certain post does not confer right to entitlement to be regularized on the post. The workman has never worked as Lamp Issue Clerk in Victoria West Colliery of M/s. Bharat Coking Coal Limited and the purported document upon which he is relying is not a valid authorization and the same does not bear any official doctating number nor it has been addressed to any authorities. No reliance can be placed upon the purported authorization which is manufactured one and the management disputes the correctness and genuineness of the same.

4. The workman has filed rejoinder. He has stated that the workman Sri Bal Mukund Sharma is designated as Fitter Apprentice in Category - I as per terms of employment. He joined M/s. Bharat Coking Coal Limited as Fitter Apprentice on 10.09.1991. He has completed more than 10 years of service in same grade. Although as per terms and conditions of the appointment he had to impart training for the period of 3 years. After completion of the training he has to be absorbed as Fitter in Category - IV. But this was not done by the management. The workman has denied that his claim is unjust or illegal. He has alleged that he was authorized by the then Agent of Victoria West Colliery of M/s. Bharat Coking Coal Limited to work as Lamp Issue Clerk in Clerical Grade - III vide authorization dated 03.01.1996. Accordingly the workman worked as Lamp Issue Clerk w.e.f. 03.01.1996. Even after transfer of that Agent he continued to work as Lamp Issue Clerk. The workman has denied in his rejoinder that the job of Lamp Issue Clerk is done by Register Keeper, Sri Bal Mukund Sharma has also denied that he did not work as Lamp Issue Clerk. The management is denying this with a view to disclaim Sri Bal Mukund Sharma's claim for regularization. As per terms and conditions he was to undergo training for 3 years but he was never sent for training. There are lot of cases where workman has been regularized in Monthly Rated Staff such as :-

- “(i) *Sudhir Singh, Fitter Apprentice of Area Workshop has been regularized as Jr. Date Entry Operator in EDP in T&S Gr. ‘D’ in the year 1999.*
- (ii) *D. N. Singh, Vehicle Driver of NLOCP has been regularized as W.B. Clerk in 1999 (i.e. after 01.07.1992) and now working at R. K. Dump.*
- (iii) *Sipahi Ram of B/mata Colliery who was General Mazdoor in Cat-I was regularized as Magazine Clerk in Clerical Grade – III after 01.07.1992 who is now attendance Clerk in Grade – I.”*

The workman has stated that contention of the management is wrong that authorization to work as Lamp Issue Clerk is fake or false. It may be confirmed by Sri R. J. Singh, Dy. C.M.E. posted in C.C.L., Rajhara Area by summoning him as witness. It is wrong to say that there is embargo form the Headquarter that no person working in Underground shall be brought on Surface.

- “(i) *Sri Bimal Roy, Pit Munshi of Victoria West Colliery has been taken as W.B. Clerk at Victoria West Colliery.*
- (ii) *Sri Prakash Ram, Elec. Helper has been regularized as C.D.S. Operator and brought on Surface.*
- (iii) *Sri Krishna Ram, Elec. Helper regularized as C.D.S. Operator on Surface.*
- (iv) *Sri Anup Bhattacharjee, U.G. General Mazdoor has been regularized as C.D.S. Operator and brought on Surface.”*

Sri Gopilal Sharma, Underground General Mazdoor Category - I has been regularized as Safety Assistant though there was no post. The Lamp Room is under the charge of Safety Officer. Management may be asked to produce Sri M. D. Yadav, Safety Officer to lead evidence before the Tribunal for confirmation of the fact that Sri Bal Mukund Sharma has been working Lamp Issue Clerk.

**5. Workman has filed following documents:-**

(i) Photocopy of the Five Slips issued by the Colliery Management and Safety Officer (ii) Photocopy of the Office Order of Sri Bimal Roy, Pit Munshi to Weigh Bridge Clerk, (iii) Photocopy of the Letter of Assistant Labour Commissioner (Central), Asansol, (iv) Photocopy of the Officer Order of Sri Sudhir Kumar Singh, serial no. 20, Fitter Apprentice to Junior Data Operator, (v) Photocopy of the Office Order issued by Sri D. N. P. Singh and Sri D. B. Singh of (a) Sri Omprakash Ram, (b) Sri Krishna Kr. Ram, (c) Sri Anup Bhattacharya, all of them are Underground Workers, (vi) Photocopy of the Headquarters’ approval for appointment of Sri Sharma as U.G. Loader and subsequent re-designation as Fitter Apprentice vide letter Ref. No. BCCL:PA-VI:3(8):Ar:XII:117:91: 26568-69 dated 28.08.1991, (vii) Photocopy of the Principal E.M.T.I., Dhansar’s letter no. 2817 dated 29.01.1994 [serial no. 16], (viii) Photocopy of the Principal, E.M.T.I., Dhansar’s letter no. 2928 dated 09.04.1994 [serial no. 38], (ix) Photocopy of the letter of authorization dated 03.01.1996 issued by the then Agent of Victoria West Colliery of M/s. BCCL, (x) Photocopy of the letter of the union dated 06.06.1997 raising dispute of the matter of regularization, (xi) F.O.C. report of A.L.C.(C), Asansol No. 1/53/97.E2 dated 24/29.06.1998, (xii) Photocopy of the Letter dated 31.07.2001 from Sri Bal Mukund Sharma to C.G.M., C.V. Area, M/s. B.C.C.L., seeking permission for knocking the door of the court for payment of subsistence allowance / wages for forced idle period, (xiii) Photocopy of the Area Personnel Manager’s Office Order dated 16.01.2001 regarding posting Sri Sharma at Dahibari Colliery, (xiv) Photocopy of the Agent, Dahibari Colliery’s letter dated 18.01.2001 regarding joining of Sri Bal Mukund Sharma at Dahibari Colliery, (xv) Photocopy of Sri Bal Mukund Sharma’s letter dated 17.12.1999 addressed to the Agent (by name) of Victoria West Colliery.

The Workman Sri Bal Mukund Sharma has filed affidavit besides PW-2,

Sri Ram Niwas Kanu and PW-3, Sri Ganga Mahato has filed affidavit in support of the workman. They have been cross-examined by the learned advocate of Victoria West Colliery of M/s. Bharat Coking Coal Limited.

The Agent of Victoria West Colliery of M/s. Bharat Coking Coal Limited has filed following documents:-

(i) Photocopy of the Letter of Sri Bal Mukund Sharma dated 10.02.1997 addressed to the Chief General Manager, C.V. Area of M/s. BCCL for his deployment as Electronic Weighbridge Operator, (ii) Photocopy of the Enquiry Report of A.L.C.(C), Asansol dated 29/30.03.2000 to the Secretary, Govt. of India, Ministry of Labour, (iii) Photocopy of the letter dated 12/14.07.1997 from Dy. Chief Personnel Manager, C.V. Area of M/s. BCCL to the A.L.C.(C), Asansol.

Agent of Victoria West Colliery of M/s. Bharat Coking Coal Limited has not filed any oral evidence.

**6.** I have heard Sri S. K. Pandey, learned union representative on behalf workman Sri Bal Mukund Sharma and Sri P. K. Das, learned advocate on behalf of the management of Victoria West Colliery of M/s. Bharat Coking Coal Limited.

7. Sri S. K. Pandey, learned union representative on behalf workman has argued that Sri Bal Mukund Sharma the concerned workman has been working as Lamp Issue Clerk under the authority of the Agent of Victoria West Colliery of M/s. Bharat Coking Coal Limited. The Agent of Victoria West Colliery of M/s. Bharat Coking Coal Limited has authorized him on 03.01.1996 but management of Victoria West Colliery of M/s. Bharat Coking Coal Limited is illegally not regularizing him on post of Lamp Issue Clerk. There is post of Lamp Issue Clerk in clerical cadre. Whereas Sri P. K. Das, learned counsel on behalf of the management has argued that Sri Bal Mukund Sharma has not been authorized as Lamp Issue Clerk. The so called certificate, if any, is manufactured one. He has not been working as Lamp Issue Clerk. Therefore he can not be regularized on the post of Lamp Issue Clerk.

8. The workman has filed approval for appointment of Sri Bal Mukund Sharma as Underground Loader and subsequent re-designation as Fitter Apprentice letter no. Ref. No. BCCL:PA-VI:3(8):Ar:XII:117:91:26568-69 dated 28.08.1991. The workman has filed letter Ref. No. BCCL/EMTI/F-18/94/2817 dated 28/29.01.1994 of the Principal of E.M.T.I., Dhansar, addressed to the Agent for important training for Apprentice Fitter. The name of Sri Bal Mukund Sharma appears at serial no. 16 (Sixteen) at this letter. The workman has filed letter Ref. No. BCCL:EMTI:F-41/94/2928 dated 07/09.04.1994 of Principal of EMTI, Dhansar, addressed to the Agent for important training of Fitter from 02.05.1994 to 31.05.1994. The name of Sri Bal Mukund Sharma appears at serial no. 38 (Thirty Eight) of this letter. The Agent Victoria West Colliery of M/s. Bharat Coking Coal Limited has authorized Sri Bal Mukund Sharma, Fitter Apprentice to work as Lamp Issue Clerk at Victoria West Colliery of M/s. Bharat Coking Coal Limited w.e.f. 03.01.1996. This letter has been issued 03.01.1996. The workman has filed the letter of the Agent of Victoria West Colliery of M/s. Bharat Coking Coal Limited. The workman has filed photocopy of Certificate issued to Sri Bal Mukund Sharma. He has been allowed to work as Lamp Issue Clerk. This letter has been issued on 16.09.1997, 16.11.1997, 21.11.1997, 08.12.1997 and 29.12.1997. The workman has stated in his oral evidence that he has been authorized to work as a Lamp Issue Clerk by the then Agent of Victoria West Colliery of M/s. Bharat Coking Coal Limited. He has supported these documents in his oral evidence. PW-2, Sri Ram Niwas Kanu and PW-3, Sri Ganga Mahato have alleged in their affidavit that Sri Bal Mukund Sharma has been performing job of Lamp Issue Clerk. These witnesses have been cross-examined in length. But there is no reason to disbelieve their affidavits.

9. ‘Clerical staff’ has been mentioned in the ‘Nomenclature, Job Description and Categorisation of coal Employees’ the post of Lamp Issue Clerk (Return and Issue) has been mentioned at serial no. 25 under the heading ‘OUTDOOR OR UNDERGROUND’. It indicates that there is post of Lamp Issue Clerk in the Colliery. So far as genuineness of Authority letter of the Agent of Victoria West Colliery of M/s. Bharat Coking Coal Limited has concerned M/s. Bharat Coking Coal Limited did not care to summon the then Agent as witness and to challenge its authenticity. The authority letter is on the pad of M/s. Bharat Coking Coal Limited. There is no ground to suspect it.

10. Hon’ble Apex court in **State Of Karnataka and Others v/s Umadevi and Others (2006) 4 SCC, page 1** has held that :

*“ the words "regular" or "regularization" do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments. ”*

11. In view of the above discussion the action of management of Victoria West Colliery of M/s. Bharat Coking Coal Limited in denying regularization of Sri Bal Mukund Sharma Apprentice Fitter is unjustified. The management of Victoria West Colliery of M/s. Bharat Coking Coal Limited is directed to regularize Sri Bal Mukund Sharma, Apprentice Fitter as Lamp Issue Clerk in Clerical Grade - III w.e.f. his functioning as Lamp Issue Clerk i.e. 03.01.1996 and accordingly re-fix his pay in terms of National Coal Wage Agreement – V and VI.

#### ORDER

Let an “Award” be and the same is passed as per above discussion. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 10 मार्च, 2017

**का.आ. 733.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय नं. 2, दिल्ली के पंचाट (संदर्भ संख्या 77/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.03.2017 को प्राप्त हुआ था।

[सं. एल-12011/23/2006-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 10th March, 2017

**S.O. 733.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 77/2008) of the Central Government Industrial Tribunal-cum-Labour Court No. II, Delhi as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 10.03.2017.

[No. L-12011/23/2006-IR (B-I)]

B. S. BISHT, Section Officer

**ANNEXURE**

**BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO-II, KARKARDOOMA COURT COMPLEX, DELHI**

**ID.No. 77/2008**

The Distt. Organiser,  
All Indiab Ex-Serviceman Bank Employees Federation,  
3-HBC, Kanheli Road, Rohtak,  
Rohtak-Haryana

...Workman

**Versus**

The Assitt. General Manager  
State Bank of India, Region –III , SCO- 25,  
Huda, Sector-25 , Panipat.  
Panipat

...Management

**AWARD**

The Central Government in the Ministry of Labour Vide Letter No. L-12011/23/2006-IR(B-I) dated 18.01.2008 referred the following Industrial Dispute to this Tribunal for adjudication :-

“Whether the action of the management of State Bank of India, Rohtak in passing out transfer order dated 4.11.2004 consequent upon re-instatement of Sh.Ishwar Lal, Clerk-cum-Cashier, is justified and legal ?If not , what relief is the workman concerned entitled to ?

On 23.01.2008 reference was received in this Tribunal. Which was register as I.D No.77/2008 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

Workman filed claim statement on 31.01.2008. Where-in he prayed as follows:-

In view of afore mentioned facts and circumstances of the case, workman prays for the following reliefs:-

- A. The statement of claim matter be admitted and allowed;
- B. The case/record file of LCA No. 3/2005 be clubbed and read as part of this statement of claim;
- C. The impunged Transfer order dated 4.11.2004 (copy enclosed herein Annexure ‘A) passed by Assistant General Manager, Region-III Haryana, Panchkula be declared as illegal, arbitrary, unjustified, without jurisdiction, void –ab-initio, improper irrational violative to the stature and Bank Transfer policy (Award Staff) and quashed accordingly;
- D. Following the Award / Corrigenda Dated 5.5.2004 and 15.06.2004, workman’s rejoining with joining report dated 12.07.2004 at last served Bahadurgarh Branch be declared as per rule Award accordingly. Workman be deemed to have rejoined duties in SBI w.e..f. 12.07.2004 thereby became eligible and entitle for full pay and allowances and all other dues/benefits from the date of Award without prejudice to other remedies available under the Act, rules and the Constitution of India.
- E. Any other relief (s) as deemed fit and proper may also be allowed for meeting the ends of justice.

Against claim statement management filed written statement on 4.11.2008. Where-in management prayed as follows:-

“The claim of the workman is devoid of any merits. The Award may please be passed in favour of the management, holding the action of the management as valid and legal.”

Workman filed rejoinder on 1.1.2009 Where-in he re-affirmed the contents of claim statement.

On 6.11.2009 my Ld. Processor framed following issues :-

1. As per terms of reference?
2. Relief?

Workman also filed his affidavit in his evidence. Copy of which supplied to management for cross-examination of workman. On 12.01.2010 evidence of workman recorded and he was cross-examined.

Fixed 12.04.2010 for management evidence.

On 12.04.2010 MW1 Grover filed his affidavit. Copy of which supplied to workman for cross-examination of MW1.

On 26.07.2010 part evidence of MW1 recorded and 19.10.2010 was fixed for further cross-examination of MW1.

On 19.10.2010 management sought adjournment which was allowed on the payment of Rs. 500/-as cost and case was adjourned to 19.01.2011.

On 19.01.2011 cross-examination of MW1 is recorded and 9.5.2011 is fixed for arguments .

On 19.05.2011 workman sought time to file written arguments. Hence 7.9.2011 was fixed.

On 7.09.2011 workman moved application u/s 11 (3) ID. Act .

He filed written arguments on 11.09.2011.

Contents of Written arguments of workman are as follows:-

1. that a departmental appeal Ex. WW1/11 preferred against impugned order of transfer is still pending;
2. that then the impugned order was challenged in unfair Labour Practices Complaint u/s-2 (ra) 7 Ex. WW1/15 since decided by this Hon'ble Tribunal vide order dated 22.09.2005 Ex. WW1/17 with certain lawful findings and observations briefed as under-

“Had he been transferred against rules during the pendency of reference this Court certainly would have jurisdiction to go into the matter in detail and see whether transfer order is in conformity with the rules laid down for the same. No reference is pending (ID-106/91 already decided vide Award Ex. WW1/1 ) in case reference is decided the Tribunal /Court becomes functus officio. The applicant has no doubt a good case and he should have been reinstated on the post which he held prior to his termination. The management has not acted judiciously. The order of the management is no doubt arbitrary and unjust. The management might be aggrieved as the workman applicant was reinstated w.e.f. the termination of his services. The transfer order is no doubt against the rules but the applicant can be given no relief as (no reference is pending) the court has no jurisdiction to entertain such application.”

3. That workman again moved before ALC ( C ) Faridabad in order to get the matter referred to this Hon'ble Tribunal for adjudication and award. Meanwhile keeping in view the aforementioned findings /observations of this Hon'ble Court (see Ex. WW1/17). Management in its W.S. dated 22.03.2006 proposed to settle the dispute as under:-

“..... it has been decided to post Sh. Ishwar Lal at Rohtak Main Branch of the post Sh. Ishwar Lal may report for duty on 24.03.2006 at the Rohtak Main Branch.

2. Sh. Ishwar Lal will be deemed to be reinstated in Bank's service w.e.f 03.01.1984 in terms of Award dated 5.05.2004 as modified by corrigendum dated 15.06.2004.

3. That the last basic pay drawn by Sh. Ishwar Lal as on 03.03.1984 will be taken in terms of wage revisions for the purpose of fixing his basic pay as on 01.01.2000 for the purpose of stoppage of two increments and paying 56% of back wages from 1.01.2000 to 4.11.2004.

4. That Sh. Ishwar Lal will not be paid any salary from 4.11.2004 till the date he now reports for duty at our Rohtak Main Branch on the principles of No Work No Pay”.

5. That accordingly , 1d ALC ( C ) FBD recorded the conciliation proceedings dated 23.03.2006 as under:-

“During the course of joint discussions with the parties, both parties have agreed to allow Sh. Ishwar Lal, workman to join his duties at SBI Main Branch Rohtak on 24.03.2006 F/N ... issue of payment of back wages as per Award of CGIT will be discussed before C.O. 28.04.2006”.

6. That vide Joining Report-II dated 24.03.2006 F/N workman rejoined w.e.f 24.03.2006 F/N at SBI Main Branch Rohtak Subject to condition that “my seniority for all purposes shall stand with effect from 16.09.1981 i.e date of original entry into Bank’s service”. Vide 1<sup>st</sup> joining report dated 12.07.2004 F/N his earlier rejoining at last served Bahadurgarh Branch was apparently prevented by the bank management. As such, the principle of “No work no pay” could not be applied in this case. 2005 (1) RSJ 606 P&H (DB) relied (copy encl).

7. That impugned order of transfer to Lucknow LHO and onwards to some unknown rural branch being illegal, arbitrary, unjust, without jurisdiction, against this statute /banks transfer policy i.e viod –ab-initio was never materialized but self superseded as withdrawn legally. Yet the same is brought into operation illegally with the following Affects:-

- A. Service break from 4.11.2004 to 23.03.2006,
- B. No back wages from 1984 to 1999 and 4.11.2004 to 23.03.2006 illegally applying principles “No work No pay”
- C. Increment from 1984 to 2001 and 2005=19+ 1 Special Increment on computerization in Nov’ 93 i.e total 20 years increments stopped;
- D. Time scale promotions ie. Senior Assistant after ten years service and special Assistant after 21 years services further changes of promotion to officer scale –I and scale –II denied.
- E. PF accumulation stands reduced to below Rs. One Lac only rather than normal/usual above Rs. Ten Lacs,
- F. Pension w.e.f 1.07.09 sanctioned @ Rs. 3598/ P.M. rather than normal /usual nearabout rs. 10000/-P.M.
- G. Silver Jubilee Award (after 25 years service)denied.

8. That the management in its Inter Office Note Dated 23003.2009 (copy enclosed has self stated that if the impugned transfer order Ex. WW1/6 is set aside by the CGIT-II then the benefits since detained for the period 4.11.2004 to 2303.2006 shall be released to the workman.

9. That since the reference is pending , this Hon’ble Tribunal in its order Ex. WW1/17 had already held the impugned transfer order as arbitrary, unjust , against the rules hence liable to be enterfeared and quashed, therefore, management transfer order Ex. WW1/6 may be gone into and quashed accordingly.

Then 8.11.2011 was fixed for filing of written arguments by management as well as reply to application u/s 11(3) ID. Act.

On 8.11.2011 fixed 25.1.2012 as last opportunity to file reply against application u/s11 (3) ID. Act .

On 25.1.2012 reply by management filed and 14.3.2012 was fixed for disposal of application u/s 11(3) ID. Act.

Management also moved application and objection was invited and put up for disposal of management application on 14.03.2012. Copy of application of management supplied to workman and 12.05.2012 was fixed for reply.

On 12.05.2012 workman filed reply and 16.07.2012 was fixed for disposal of application of workman and application of management. On 16.07.2012 application of workman u/s 11(3) ID. Act was allowed and management was directed to produce documents on 8.11.2012 .

On 8.11.2012 Ld A/R for the management sought time to file documents and case was adjourned to 11.01.2013.

On 23.04.2013 Dr. R.K. Yadav, recalled order dated 6.2.2012 as it was procedural and called upon workman to advance argument. Which was advance in part and fixed 4.6.2013 for remaining arguments of workman.

On 4.6.2013 workman sent an application through post for recalling order dated 23.06.2013 and sought adjournment and case was adjourned to 9.7.2013 workman moved an application u/s 11(3) ID.Act, fixed 8.8.2013 for furnishing of application to management as well as disposal of application .

On 8.8.2013 I heard the workman in person on the point of disposal of application dated 13.05.2013 and 9.7.2013 and fixed 21.07.2013 for order.

On 21.08.2013 I reject the application dated 13.05.2013. Through which workman sought relief cancelling of order dated 23.4.2013 passed by Dr. R.K. Yadav as I was not appellate authority of Dr. R.K. Yadav . But allowed application dated 9.7.2015 through which workman sought permission to file document relating to pay fixation /calculation sheet alleged to be prepared by management and available in management record file and fixed 29.8.2013 for filing of those documents by workman.

But workman sought adjournment on 29.8.2013, 13.03.13, 19.11.2013, 13.01.2014, 14.04.2014 & 2.07.2014.

On 24.07.2014 Ms. Kittu Bajaj, Ld. A/R for the management filed reply arrear /calculation sheet w.e.f 1.1.2000. Copy of which supplied to workman.

Fixed 4.9.2014 for filing of paper.

On 4.09.2014 management moved an application alongwith its copy to be supplied to workman . Fixed 28.10.2014 for objection and disposal. On 28.10.2014 workman filed reply and I fixed 10.11.2014 for disposal of management application . On 10.11.2014 I heard arguments of workman only and fixed 17.11.2014 for order. On 17.11.2014 case was adjourned to 24.2.2014 for order as I was on leave and 11.02.2015 fixed for order.

On 11.02.2015 with the consent of parties case was adjourned to 19.3.2015.

On 19.03.2015 I passed detailed order rejecting application of management and permitted to workman to lead secondary evidence on the point of document demanded by workman from management and fixed 21.05.2015 for the same.

On 14.09.2015 workman filed affidavit I fixed 29.10.2015 for tendering of affidavit and cross-examination of workman.

On 22.12.2015 workman tendered his affidavit on the point of secondary evidence and his cross-examination was deferred to 4.01.2016.

On 4.01.2016 his cross-examination was concluded and I fixed 16.2.2016 for rebuttal evidence by management if any

On 16.02.2016 I fixed 1.04.2016 for rebuttal evidence by management if any.

On 1.04.2016 I gave opportunity to management for rebuttal evidence of management and fixed 19.04.2016.

On 19.04.2016 I closed the right of rebuttal evidence of management and fixed 7.6.2016 for arguments.

On 7.6.2016 workman file orally argued and stated that written arguments is on record then I reserved award with liberty to management to file written arguments.

No written arguments has been filed by management so far.

It is relevant mention here that workman Sh. Ishwar Lal was appointed on 16.09.1981 as Clerk -cum- Cashier .

He was dismissed on 30.07.1985 as Clerk cum-Cashier .

It is also relevant to mention here that workman Sh. Ishwar Lal was Superannuated on 30.06.2009.

On 5.05.2004 Award was passed by Presiding Officer of CGIT in favour of workman.

Award was published vide Central Government notification on 13.05.2004.

Award was corrected by Presiding Officer CGIT on 15.06.2004. Which was published same day vide Notification of Central Government.

On 12.07.2004 workman Sh. Ishwar Lal, through joining report reported for joining duties at last served Bahadur Garh Branch but management advised him to wait for orders from controlling authority.

On 25.08.2004 management informed the workman through letter that we are not in position to act upon your request for joining at present in absence of Award / Corrigenda/Notifications. Although copies of those documents have already been supplied to management.

In the light of contentions and counter contentions I perused the pleadings and evidence of parties including previous Award dated 5.5.2004 passed by Sh. R. N. Rai, the then Presiding Officer CGIT. Which was amended vide corrigendum dated 15.06.2004.

Through which reference was replied thus:

The Action of the management of S.B.I in dismissing Sh. Ishwar Lal Clerk cum-cashier w.e.f 30.07.1985 is neither just nor fair nor legal.

The workman deserves to be reinstated from 3.03.1984 with the stoppage of two increments with cumulative effect and he is not entitled to get any back wages as he is gainful employment prior to 1.01.2000 . It is clarified that he will get 50% back wages after 1.1.2000 and his two increments will be stopped with cumulative effect.

Perusal of evidence on record makes it crystal clear that Award dated 5.5.2004 passed and amended vide corrigenda dated 15.06.2004 by Sh. R.N. Rai the then P.O. CGIT, Delhi.

Perusal of evidence on record further makes it crystal clear that aforesaid award was not challenged by either party before Hon'ble High Court. So it has become final. Therefore it was to be complied with by management of State Bank of India.

It is relevant to mention that workman Sh. Ishwar Lal on 12.07.2004 through joining report alongwith copy of award , copy of corrected award etc reported for joining duties at last served Bahadurgarh Branch but management of State Bank of India was adamant not to comply the award. Hence it advised workman Sh. Ishwar Lal to wait for orders from controlling authority as we are not in position to act upon your request for joining at present in absence of Award /Corrigenda/Notifications. Although copies of those documents have already been supplied to management. Such deceptive information was sent to workman Sh. Ishwar Lal through letter dated 25.08.2004.

It is further relevant to mention here that after publication of Award and its corrigenda , copies of notifications were sent to parties by concerned government even then management of State Bank of India is concealing this material fact to avoid the compliance of Award and its corrigenda inspite of their publication in Gazettes. Due to which workman Sh. Ishwar Lal had superannuated on 30.06.2009 without getting benefits of aforesaid Award.

Before his Superannuation workman Sh. Ishwar Lal raised Industrial Dispute hence reference was sent to this Tribunal for adjudication of following questions of determination mentioned in its schedule:-

1. Whether the action of the management of State Bank of India, Rohtak in passing out transfer order dated 4.11.2004 consequent upon re-instatement of Sh.Ishwar Lal, Clerk-cum-Cashier, is justified and legal ?
2. If not, what relief is the workman concerned entitled to ?

Issue No. 1 framed by my Ld. Predecessor is Question of Determination No.1 and Issue no.2 is Question of determination No. 2.

My Issuewise findings are as follows:-

#### FINDINGS ON ISSUE NO.1

Perusal of contents Issue no. 1 makes it crystal clear that burden to Issue No. 1 lies on management of State Bank of India but management of State Bank of India in this respect has not adduced its oral and documentary evidence to prove issue No.1.

In these circumstances this Tribunal has no option except to decide issue No. 1 in favour of workman and against management in want of evidence of management in want of evidence of management.

Which is accordingly decided.

#### FINDING ON ISSUE NO.2

This issue is relating to relief to workman . As Issue No. 1 has already been decided in favour of workman and against management . Moreover it is apparent on record that workman Sh. Ishwar Lal was not reinstated in-compliance of award and its corrigenda passed in ID.No. 106/91. Due to which workman has to raise another Industrial Dispute. Meanwhile workman was superannuated on 30.06.2009. So workman cannot be reinstated but workman cannot be deprived to get pecuniary benefits on the basis of award passed on 5.5.2004 and Corrigenda on 15.06.2004 in ID. No. 106/91.

According to award dated 5.5.2004 workman was entitled to be reinstated from 3.03.1984 with the stoppage of 2 increment with cumulative effect and he was not entitled to get any back wages as he was in gainful employment prior to 1.1.2000. He will get 50% back wages after 1.1.2000 and his 2 increments will be stopped with cumulative effect. Therefore management has to provide pecuniary benefits to workman Sh. Ishwar Lal. On the basis of calculation of basic pay etc. of workman Sh. Ishwar Lal within 2 months after expiry of period available remedy against this award.

Failing which workman Sh. Ishwar Lal shall be entitled to interest 9% p.a on the due amount till final payment to him.

Reference is liable to be decided in favour of workman and against management.

Which is accordingly decided.

Award is accordingly passed.

Dated:-18.1.2017

HARBANSH KUMAR SAXENA, Presiding Officer



नई दिल्ली, 10 मार्च, 2017

**का.आ. 734.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंदौर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 1/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.03.2017 को प्राप्त हुआ था।

[सं. एल-12012/226/96-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 10th March, 2017

**S.O. 734.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1/98) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of Indore and their workmen, received by the Central Government on 10.03.2017.

[No. L-12012/226/96-IR (B-I)]

B. S. BISHT, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/1/98

General Secretary,  
All India State Bank of India Indore Employees Congress,  
9, Sanwer Road, Hardev Niwas,  
Indore

...Workman/Union

#### Versus

Assistant General Manager,  
State Bank of Indore,  
Head Office, 5, Yashwant Road,  
Indore (MP)

...Management

#### AWARD

Passed on this 4<sup>th</sup> day of January 2017

1. As per letter dated 9-1-98 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No.L-12012/226/96-IR(B). The dispute under reference relates to:

“Whether the action of the Assistant General Manager, State Bank of Indore, Head office, Indore after acquittal of workman Chandrashekhar Mahendele peon by Court holding DE and denying benefit of allowances is justified? If not, to what relief the concerned workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim through Union at page 3/1 to 3/5. Case of Ist party workman is that he was member of All India state Bank of India Congress, Indore. He left said Union and accepted membership of Nationalised Bank Employees Union. That he was on leave during the period 29-5-89 to 6-6-89. On 5-6-89, fraud of Rs.2800 in account of one Dilip Kumar Modi was noticed. The Branch Manager had reported said incident to police station on 23-6-89. He was suspended on 13-7-89 without calling his explanation. Chargesheet was issued to workman on 24-11-89 after 4 months of his suspension. Chargesheet was issued without any basis. Workman submitted reply to the chargesheet on 1-2-90. Enquiry Officer Shri S.K.Behel was appointed on 7-2-90. The enquiry was conducted on 28-8-90 till 16-4-91 on various dates. As per bipartite settlement, first 3 months he was entitled for allowance 1/3<sup>rd</sup> of the pay and thereafter half pay and after one year full pay. From the date of his suspension 13-7-89 till 13-7-90 he was eligible for allowance equal to full pay. Enquiry was started from 28-8-90. He had not delayed enquiry. Enquiry was stayed on 19-7-91 as police had submitted challan in criminal case no. 183/91, 2 years after his suspension. He was acquitted by Criminal Court on 24-6-96.

3. After acquittal of workman by criminal court, his suspension was revoked and he was reinstated in service on 25-7-96. After reinstating workman, management started enquiry changing the Enquiry Officer. He was not given opportunity to cross examine management witness. Exparte enquiry was conducted. The punishment of withholding 2 increments of workman was imposed. He was not granted increments during suspension period of 8 years. Workman raised dispute. Workman prays that for payment of full subsistence allowance from 13-7-90 i.e. after completion of one year from date of his suspension till his reinstatement in service on 25-7-96 after his acquittal in criminal case.
4. Management filed Written statement at Page 9/1 to 9/7 opposing claim of workman. 2<sup>nd</sup> party management submits that workman was appointed as peon on 19-4-84. He was regularised on 19-10-84. His service conditions are covered by bipartite settlement between Indian Bank Association and the Bank Employees Association. 2<sup>nd</sup> party further submits that workman while working as peon and posted at Garod branch intentionally made false withdrawals from accounts of customers. On 29-5-89, he applied for leave. He was required to attend duty on 30-5-89 but intentionally he did not resumed duty on that day. He reported for duty on 7-6-89 submitting medical certificate requesting medical leave for the period 29-5-89 to 6-6-89. On 5-6-89, workman was present in Bank. On that day forging signature of Dilip Kumar holder of account No. D/42., workman withdrawn amount of Rs.1800 committing fraud on Bank. He was suspended on 13-7-89, chargesheet was served on him on 20-11-89. In reply to chargesheet, workman denied his involvement in fraud. He denied the charges. Shri S.K.Behel was appointed as Enquiry Officer, Modi as Presenting Officer. Enquiry was conducted on various dates between 20-8-90 to 16-4-91. On 19-7-91 police arrested workman for offence under Section 467, 468, 420 IPC. Challan was filed before JMFC, Garod. Enquiry proceedings were stayed during pendency of criminal case. On 26-6-96, workman was acquitted. Workman was reinstated. On 25-7-96, management decided to restart enquiry. Mr. Sanghvi was appointed as Enquiry Officer, Shri Upadhyay was appointed as Presenting Officer. Enquiry was conducted as per rules. Workman was allowed full opportunity to participate and cross examine management's witnesses. Enquiry Officer submitted his report holding workman guilty. After showcause notice, punishment of withholding two increments of workman was imposed vide order dated 12-8-98. Management reiterates that evenafter acquittal from criminal case, management has right to conduct enquiry. Punishment of withholding two increments was imposed. The suspension period was treated on duty without any monetary benefits. 2<sup>nd</sup> party submits that punishment is legal. Claim of workman deserves to be rejected.
5. Ist party workman filed rejoinder at Page 11/1 to 11/3 reiterating contentions in statement of claim.
6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the Assistant General Manager, State Bank of Indore, Head office, Indore after acquittal of workman Chandrashekhar Mahendele peon by Court holding DE and denying benefit of allowances is justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

### REASONS

7. The term of reference pertains to legality of the action of management after acquittal of workman conducting enquiry and denying benefits of allowance is legal. Workman filed affidavit of his evidence supporting his contentions in statement of claim. Appointment of workman, suspension of workman on 13-7-89, acquittal of workman by criminal court, revocation of suspension of workman on 25-7-96, enquiry started against workman from 25-7-96 are not in dispute. Workman in his cross examination denies that on 29-5-89 he had wrongly withdrawn amount. He says that he was on leave during period 29-5-89 to 6-6-89. He resumed duty on 6-6-89. Chargesheet was received by him about fraudulently withdrawing amount from account. In his cross examination, workman claims he is not acquitted with the lacuna. He denies that he had fraudulently withdrawn amount of Rs. 2800 forging signature of Shri Dilip Kumar. He was suspended. On the basis of chargesheet issued to him, enquiry was conducted against him. He had appeared in the Enquiry Proceedings, he was not cross examined. Enquiry Officer and Presenting Officer were changed. He was acquitted in criminal case., he received showcause notice.
8. Management filed affidavit of evidence of Shri Rajendra Kumar supporting contentions in Written Statement. The chargesheet was issued to workman on 1-9-89. Workman was suspended on 13-7-89 enquiry was conducted during the period 20-8-90 to 16-4-91. Workman was arrested by police for various offences. Criminal Case No. 183/91 was prosecuted therefore enquiry was kept in abeyance. On 26-6-96, workman was acquitted. Thereafter management decided to continue enquiry appointing Enquiry Officer and Presenting Officer. That punishment of withholding two increment was imposed against workman. On the basis of findings of Enquiry Officer, charges were proved. In his

cross, management's witness says during period 1989 to 1996, he was not posted at Garod neither he was posted at Regional office. Documents of enquiry are not produced. Punishment order is not produced.

9. As argued by learned counsel for 2<sup>nd</sup> party Shri Ashish Shrotri order of punishment withholding two increments of workman is not challenged by the workman. The term of reference pertains to even after acquittal of workman by Criminal Court, the enquiry conducted by management and denying benefit of allowances is legal. As punishment of withholding two increments is not challenged, detailed discussion w.r.t. punishment of withholding two increments is not necessary. Question after acquittal by Court whether the management has authority to conduct enquiry is the case of dispute between parties.

10. Learned counsel for management Shri Shrotri on the point relies on ratio held in

Case between South Bengal State Transport Corporation versus Sapan Kumar Mitra and others reported in 2006(2)SCC-584. In para 9,10 of the judgment, their Lordship dealing with acquittal in criminal trial held whether the disciplinary proceedings could have been continued in the face of the acquittal of the appellant in the criminal case, the plea has no substance whatsoever and doesnot merit a detailed consideration. The nature and scope of a criminal case are very different from those of a departmental disciplinary proceeding and an order of acquittal, therefore cannot conclude the departmental proceedings.

Their Lordship has held this court has further held that in a criminal case charge has to be proved by proof beyond reasonable doubt while in departmental proceeding, the standard of proof for proving the charge is mere preponderance of probabilities. Such being the position of law now settled by various decisions of this Court, two of which have already been referred to earlier, we need not deal in detail with the question whether acquittal in a criminal case will lead to holding that the departmental proceedings should also be discontinued.

The acquittal of Ist party workman in criminal case doesnot take away right of management to continue enquiry.

11. The documents are produced on record. Exhibit W-2 is order of suspension of workman, W-3 is chargesheet, W-4 is order of appointment of Enquiry Officer, W-6 is copy of judgment regarding acquittal from criminal case. Workman was reinstated as per order Exhibit W-7 on 25-7-96. As per Exhibit W-8, enquiry was started against workman.

12. The term of reference pertains to denial of allowances. Workman was suspended on 13-7-89. Chargesheet was issued to him on 24-11-89. The enquiry was conducted against workman during the period 28-8-90 to 16-4-91. As per bipartite settlement dated 8-9-93, suspended employee is entitled to subsistence allowance 1/3<sup>rd</sup> for first three months, half pay till one year and full pay after period of one year. After suspension of workman on 13-7-89 on completion of one year i.e. 13-7-90 workman is entitled to full pay as subsistence allowance till the enquiry was stayed on 19-7-91 for pending criminal case. As such action of the management non-payment of full pay as subsistence allowance from 13-7-90 till 19-7-91 is illegal. For above reasons I record my finding in Point No.1 in Negative.

13. In the result, award is passed as under:-

- (1) The action of the Assistant General Manager, State Bank of Indore, Head office, Indore after acquittal of workman Chandrashekhar Mahendele peon by Court holding DE and denying benefit of allowances is illegal.
- (2) 2<sup>nd</sup> party is directed to pay subsistence allowance at the rate of full pay for the period 13-7-90 to 19-7-91.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 10 मार्च, 2017

**का.आ. 735.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 21/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.03.2017 को प्राप्त हुआ था।

[सं. एल-12011/59/2012-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 10th March, 2017

**S.O. 735.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 21/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 10.03.2017.

[No. L-12011/59/2012-IR (B-I)]

B. S. BISHT, Section Officer

**ANNEXURE**  
**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,**  
**JABALPUR**  
**NO. CGIT/LC/R/21/2013**

General Secretary,  
Dainik Vetan Bhogi Bank Karmchari Sangathan,  
F-1, Tripti Vihar, Opp. Engineering College,  
Ujjain

... Workman/Union

**Versus**

Chief General Manager,  
State Bank of India,  
Local Head Office, Hoshangabad Road,  
Bhopal. (MP)

... Management

**AWARD**

Passed on this 3<sup>rd</sup> day of January 2017

1. As per letter dated 1-2-2013 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12011/59/2012-IR(B-I). The dispute under reference relates to:

“Whether the demand of Union for rerularising the service of Shri Prakash Rathore from the date of termination is legal and justified? If so, what relief the workman is entitled? 2. State Bank of India is a Banking Industry. 3. The nearest Tribunal is CGIT Jabalpur.

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim through General Secretary, Daily Wage Bank Employees Union. Case of Ist party workman is that he was engaged as daily wage peon on 0-1-01. He was paid wages Rs.50 per day. He was working in the Bank from its opening till closing of the Bank. Wages were increased to Rs.70, 100, 120, 140, 170 per day. He was not paid wages for holidays. Sometimes wages were paid to him in bogus names. Workman continuously worked more than 240 days , he completed 10 years working. When workman claimed bonus, his services were terminated without notice on 4-12-2010. That he worked under various Branch Managers. He acquired status of regular employee under Section 25 B of ID Act. His services were terminated without notice, retrenchment compensation was not paid to him. Termination of his service is in violation of Section 25-F of ID Act. On such ground, Ist party workman prays for his reinstatement with backwages.

3. 2<sup>nd</sup> party filed Written Statement opposing claim of workman. 2<sup>nd</sup> party submits that State Bank of Indore is merged in State Bank of India as per notification dated 20-7-2010. As per clause-7 & 8 of the notification, permanent officers employees of erstwhile State Bank of Indore were given option to be absorbed in service. Workman was not permanent employee of the erstwhile Bank. Ist party claims to have been engaged on daily wage basis. He is not entitled for absorption as per notification dated 28-7-11. 2<sup>nd</sup> party further submits that workman cannot be absorbed in banking service. Mere completion of 240 days continuous service claim for regularization cannot be allowed. 2<sup>nd</sup> party management denied workman had completed 240 days continuous service. The engagement of workman on daily wages has been denied. It is reiterated that Ist party was engaged only when work was available for him. It cannot be said he worked 6 days in a week. He was paid wages for the work performed in the Bank. He denied that wages were paid to him in bogus names. Workman never complained about it. Workman did not complete 240 days working during any of the year. There is no question of terminating his services. It is denied that services of workman are terminated in violation of Section 25-F of ID Act. Section 25 B of ID Act doesnot confer permanency to the workman. 2<sup>nd</sup> party has referred to ratio held in various cases contained in it. Daily wage employees or temporary employees are not entitled to regularisation. Claim of workman is liable to be rejected.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the State Bank of India is a Banking Industry?	In Affirmative
(ii) Whether the demand of Union for regularising the service of Shri Prakash Rathore from the date of termination is legal and justified? If so, what relief the workman is entitled?	In Negative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

### REASONS

5. 2<sup>nd</sup> party Bank is impleaded. Workman has not adduced evidence. 2<sup>nd</sup> party in its Written Statement has admitted that it is engaged in banking business. The details of the activities undertaken by 2<sup>nd</sup> party is not disclosed in the Written Statement. Bank has also failed to adduce evidence. Considering the 2<sup>nd</sup> party is engaged in Banking business, it is not engaged in sovereign activities of the State. 2<sup>nd</sup> party Bank is covered as industry under Section 2(j) of ID Act. Section 2(j) of ID Act provides-

“Industry means any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft or industrial occupation or avocation of workmen”

Considering above definition, 2<sup>nd</sup> party Bank is covered as industry under Section 2(j) of ID Act. For above reasons, I record my finding in point No.1 in Affirmative.

6. Point No.2- The term of reference pertains to demand of Union for regularizing services of Shri Prakash Rathore from the date of termination. The reference is not happily worded. If the terms of reference is correctly construed, the legality of termination of services of workman Prakash Rathore requires to be adjudicated. Workman has not adduced evidence in support of his claim. Shri Ram Nagwanshi representative of Ist party workman has submitted in writing not to lead evidence.

7. Management has admitted documents Exhibit W-1 shows particulars of the working days and payment of wages during 2003,2004,2006, 2007, 2008 & 2010. Working days of workman are shown 230 days during the year 13-1-07 to 29-12-07. Working days of workman are shown 9 days in 2010, 18 days in 2008. On said document, it is clear that workman has not completed 240 days continuous service preceding 12 months of his termination. Evidence is clear that workman is not covered s employee under Section 25 B of ID Act. He is not entitled to protection under Section 25-F of ID Act. Document Exhibit W-2 is order by Dy. Labour Commissioner rejecting complaint against Shri Ram Nagwanshi, Exhibit W-3 is order passed by Industrial Court in appeal. The appeal was dismissed. Exhibit W-2,3 are not relevant for adjudicating the dispute between parties as those documents donot disclose working days of Ist party. Workman has failed to establish he completed 2409 days continuous working during 12 months preceding his termination. Therefore termination in violation of Section 25-F is not established. The term of reference also covers claim for regularisation from the date of termination. Any rule is not pointed out by Ist party under which he is entitled to regularization in service therefore I record my finding in Point No.1 in Negative.

8. In the result, award is passed as under:-

- (1) The demand of Union for regularization of Shri Prakash Rathore from the date of termination is not legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 10 मार्च, 2017

**का.आ. 736.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 35/07) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.03.2017 को प्राप्त हुआ था।

[सं. एल-41012/58/2005-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 10th March, 2017

**S.O. 736.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 35/07) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Central Railway and their workmen, received by the Central Government on 10.03.2017.

[No. L-41012/58/2005-IR (B-I)]

B. S. BISHT, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
JABALPUR**

**NO. CGIT/LC/R/35/07**

Shri Sohan Lal, S/o Shri Hira Lal,  
Bajrang Colony, K-55, Railway Quarters,  
Civil Lines, Jabalpur

...Workman

**Versus**

Divisional Railway Manager,  
Central Railway,  
Jabalpur (MP)

...Management

**AWARD**

Passed on this 17<sup>th</sup> day of January 2017

1. As per letter dated 2-3-07 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-41012/58/2005-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of DRM, Central Railway, Jabalpur (MP) in not regularizing instead terminating the services of Shri Sohanlal S/o Shri Heeralal, Ex.Casual Labour after taking work from him time to time during the period 30-6-76 to 30-11-89 and even after taking him in service again during 2003 is legal and justified? If not, to what relief the concerned workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 3/1 to 3/2. Case of Ist party workman is that he was initially appointed as casual labour in 1975. And continued to work till year 1989. His services were terminated without notice or giving opportunity of hearing. He further submits that the persons junior to him are still working with management. In 1991, letter was issued to him inviting for interview. He attended interview before selection committee but was not considered for regular service. Again in 2003, notification of recruitment was published by management for all the casual labours for selection on different posts for regularization. Workman participated in the proceeding. Though he was selected, he was not recruited by management on the ground that eye sight was defective. He was not eligible for the post.

3. Ist party workman further submits that one Ramesh Kumar who was physically handicapped was considered by the management and selected. However management failed to consider him as physically handicapped person. That he had submitted several representations to the management. Management failed to follow policy of last come first go. His services were terminated arbitrarily. On such ground, Ist party workman prays that reference be answered in its favour.

4. 2<sup>nd</sup> party filed Written Statement opposing claim of workman. 2<sup>nd</sup> party submits that service conditions of persons engaged by Railway Administration are covered by Railway Manual. Chapter 20 deals with casual labours. Para 2001(1) deals with definition of casual labours. Definition of casual labours is reproduced. That after completion of 120 days employment, temporary is given to casual labours. Management submits that casual labours are engaged from local market for discharging job of casual nature arising intermittently. Such labours are not entitled to regular employment in Railway. The recruitment policy for appointment of regular employee requires to be followed. However as a gesture of one time settlement of dispute, it was decided to give opportunity to all ex-casual labours for regular appointment. Railway Administration had given wide publicity through daily newspapers. Workman was given opportunity for selection. He was called before screening committee. Workman was declared suitable for Grade “D”

post. He was sent for medical examination. On 14-7-03, workman was found unfit for all categories. Medical certificate was sent vide confidential letter dated 14-7-03 to DRM, Jabalpur. Decision of Medical Board was communicated to workman vide letter dated 24-7-03 as workman was declared medically unfit for employment in any of the category, he was not given employment. The persons declared medically unfit cannot be appointed in service.

5. 2<sup>nd</sup> party denies that workman was continuously working from 1975 to 1989. It is denied that workman was granted temporary status. Workman was engaged as casual labour in broken period. Workman had not completed 120 days continuous working. There was no need to issue notice to the workman. Engagement of workman was subject to availability of work. His engagement on each daily ended on the day. All adverse contentions are denied. Ist party workman raised dispute in 2007. On such ground, 2<sup>nd</sup> party submits reference be answered in favour of management.

6. Ist party workman filed rejoinder dated 2-5-13 reiterating his contentions in statement of claim. Workman further submitted that vacancies in the management are reserved for handicapped persons. Ist party workman was examined by Medical Board. He is eligible for consideration for the post of handicapped persons. Management did not consider Ist party workman for category of handicapped persons.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of DRM, Central Railway, Jabalpur (MP) in not regularizing instead terminating the services of Shri Sohanlal S/o Shri Heeralal, Ex.Casual Labour after taking work from him time to time during the period 30-6-76 to 30-11-89 and even after taking him in service again during 2003 is legal and justified?	In Affirmative.
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

### REASONS

8. The term of reference pertains to legality of the denial of regularization and termination of services of workman. Ist party workman filed affidavit of his evidence. In his affidavit of evidence, workman has stated that he was initially appointed as casual labour in 1975 and he had continued till year 1989. His services were terminated without notice or giving opportunity of hearing. In 1991, he was called for interview but he was not considered for regularization of service. Selection Committee failed to assign reasons for not considering him for regularization. In 2003, again management published notice for regularization of casual labours on different posts. He appeared before authorities but his claim was rejected without assigning reasons. One Ramesh Kumar was handicapped was selected by management. Workman was not considered for regularization in category of physically handicapped candidates. In his cross examination, workman says he rendered service with 2<sup>nd</sup> party till November 1989. In 1991, he appeared before Screening Committee. He was found fit for Group "B" post. His medical examination was conducted and he was found unfit for any post. That he had requested for light job in C-II post. He denies that after medical examination he was found unfit was communicated to him.

9. Management filed affidavit of evidence of Shri Shailendra Singh Gour. Management's witness in his affidavit has stated that dispute is raised in 2007 after lapse of several years. Management intermittently engaged casual labours available from local market for casual nature of jobs. Casual labours are not entitled to regular employment. Ist party workman was declared medically unfit for employment. The persons declared medically unfit cannot be appointed in service. Ist party workman was not continuously working during 1975 to 1989. He had not continuously worked for 120 days. Workman was not entitled for temporary status. As one time settlement, opportunity was given to ex-casuals for selection on regular post. The successful candidates found medically fit were given employment. Workman was declared unfit due to defective eye sight is not entitled for employment. Management's witness in his cross says he is working as Welfare Inspector at DRM, Jabalpur. Ist party workman was working as casual labour at PWI Sagar Division, Engineering Department. The documents about working of workman in engineering department are not available. Workman was not paid retrenchment compensation. Notice was not served on him. He claims ignorance whether seniority list of casual workers was prepared.

10. The documents produced by workman Exhibit W-1 is call for interview for absorption of casual labours dated 11-3-03. Workman was called to appear with documents, casual labours cards, photo and declaration. Exhibit W-2 is

letter dated 15-5-91 workman was called along with documents. Exhibit W-3 is proforma showing particulars of engagement of workman since 30-6-76 to 30-11-85. Working days of workman during period 28-3-88 to 18-2-89, 21-2-89 to 18-3-89, 6-7-89 to 12-7-89, 20-8-89 to 21-8-89, 7-11-89 to 9-11-89, 12-11-89 to 9-11-89, 16-11-89 to 30-11-89. workman had worked more than 120 days, copy of service card is produced at Exhibit W-6,7. Entries are not legible. Since 1989, workman did not challenged termination of his service. The claim of Ist party workman about illegally terminating his services is highly belated. As the dispute is raised in the year 2007 after lapse of 18 years, the dispute raised by workman regarding termination of his service is rendered stale.

11. So far as claim of workman that in the year 1991 and 2003, he was called for regularization of his service as casual employees. Workman has pleaded that he was declared unfit. Evidence of management's witness that workman was found unfit by medical board is not been shattered. Workman was declared unfit. No evidence is produced whether any post under consideration for regularization was reserved for handicapped category. Claim of workman for regularization is not established. For above reasons, I record my finding in Point No.1 in Affirmative.

12. In the result, award is passed as under:-

- (1) The action of the management of DRM, Central Railway, Jabalpur (MP) in not regularizing instead terminating the services of Shri Sohanlal S/o Shri Heeralal, Ex.Casual Labour after taking work from him time to time during the period 30-6-76 to 30-11-89 and even after taking him in service again during 2003 is legal and justified.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 10 मार्च, 2017

**का.आ. 737.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंदौर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचात (संदर्भ संख्या 68/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.03.2017 को प्राप्त हुआ था।

[सं. एल-12012/46/97-आईआर (बी-1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 10th March, 2017

**S.O. 737.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 68/98) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of Indore and their workmen, received by the Central Government on 10.03.2017.

[No. L-12012/46/97-IR (B-I)]

B. S. BISHT, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

**NO. CGIT/LC/R/68/98**

General Secretary,  
All India State Bank of India Indore Employees Congress,  
9, Sanwer Road, Hardev Niwas,  
Indore

...Workman/Union

#### Versus

Assistant General Manager,  
State Bank of Indore,  
Head Office, 5, Yashwant Road,  
Indore (MP)

...Management



**AWARD**

Passed on this 4<sup>th</sup> day of January 2017

1. As per letter dated 1-4-98 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-12012/46/97-IR(B-I). The dispute under reference relates to:

“Whether the action of the Assistant General Manager, State Bank of Indore, Head office, Indore in stoppage of 7 increments during suspension period of workman Shri Chandrashekhar Mahendele is proper and legal. If not, to what relief the concerned workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 3./1 to 3/5. Case of Ist party workman is that he was appointed as peon in 2<sup>nd</sup> party branch Garod as peon. During the period 29-5-89 to 6-6-89, he was on leave. On 5-6-89, fraud of Rs.2800 was committed in Garod branch. The Branch Manager submitted report to Garod on 23-6-89, name of workman was not mentioned in the report. On 13-7-89, workman was suspended without calling explanation. After 4 months, chargesheet was issued to him on 24-11-89 without any basis, workman had submitted reply to chargesheet. Enquiry Officer was appointed Shri Behel on 7-2-90. Enquiry was started against him on 28-8-90. After one year of his suspension, he was entitled for full salary as subsistence allowance.

3. Ist party further submits that settlement was arrived on 29-10-93 for granting increments. As per said settlement, letter dated 30-11-93 was issued to all branches for granting increments. For the period November 92 to April 95, he was paid arrears of allowance Rs.2300. he was not paid increments during suspension period. On 24-6-96, Ist party workman was acquitted by criminal court. He was reinstated on 29-6-96. Enquiry was restarted on the same date. Enquiry Officer Mr.Sanghvi used to call 8 witnesses remaining sitting during the day. The witnesses of management were forced to give statement suitable to the management. Despite workman was acquitted, exparte enquiry was conducted. Workman was not given opportunity for his defence. On the basis of findings of Enquiry Officer in exparte enquiry, showcause notice was issued to workman for withholding 4 increments. He had given reply to showcause notice and finally punishment of withholding two increments with cumulative effect was imposed against him. The suspension period was treated as off duty period. Ist party submits that the action of the management is illegal denying increments during suspension period is illegal. On such ground, workman prays for grant of increments during suspension period.

4. Management filed Written statement at Page 9/1 to 9/7 opposing claim of workman. 2<sup>nd</sup> party management submits that workman was appointed as peon on 19-4-84. He was regularised on 19-10-84. His service conditions are covered by bipartite settlement between Indian Bank Association and the Bank Employees Association. 2<sup>nd</sup> party further submits that workman while working as peon and posted at Garod branch intentionally made false withdrawals from accounts of customers. On 29-5-89, he applied for leave. He was required to attend duty on 30-5-89 but intentionally he did not resumed duty on that day. He reported for duty on 7-6-89 submitting medical certificate requesting medical leave for the period 29-5-89 to 6-6-89. On 5-6-89, workman was present in Bank. On that day forging signature of Dilip Kumar holder of account No. D/42., workman withdrawn amount of Rs.1800 committing fraud on Bank. He was suspended on 13-7-89, chargesheet was served on him on 20-11-89. In reply to chargesheet, workman denied his involvement in fraud. He denied the charges. Shri S.K.Behel was appointed as Enquiry Officer, Modi as Presenting Officer. Enquiry was conducted on various dates between 20-8-90 to 16-4-91. On 19-7-91 police arrested workman for offence under Section 467, 468, 420 IPC. Challan was filed before JMFC, Garod. Enquiry proceedings were stayed during pendency of criminal case. On 26-6-96, workman was acquitted. Workman was reinstated. On 25-7-96, management decided to restart enquiry. Mr. Sanghvi was appointed as Enquiry Officer, Shri Upadhyay was appointed as Presenting Officer. Enquiry was conducted as per rules. Workman was allowed full opportunity to participate and cross examine management's witnesses. Enquiry Officer submitted his report holding workman guilty. After showcause notice, punishment of withholding two increments of workman was imposed vide order dated 12-8-98. Management reiterates that evenafter acquittal from criminal case, management has right to conduct enquiry. Punishment of withholding two increments was imposed. Management reiterates that enquiry was conducted against workman strictly following the procedure, full opportunity was given for his defence and to cross examine management's witness. Punishment of withholding two increments with cumulative effect was imposed against workman on 30-4-90. Considering reply to showcause notice given by workman suspension period from 13-7-89 to 26-7-89 was treated as off duty. Workman had not preferred appeal challenging the punishment. Punishment imposed against workman is proportionate to the proved guilt. Claim of workman deserves to be rejected.

5. Workman filed rejoinder at Page 11/1 to 11/4 reiterating contentions in statement of claim.

6. The case is very old, legality of enquiry and punishment are heard simultaneously.
7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether enquiry conducted against workman is proper and legal?	In Affirmative
(ii) Whether the action of the Assistant General Manager, State Bank of Indore, Head office, Indore in imposing punishment of stoppage of 7 increments during suspension period upon workman Shri Chandrashekhar Mahendele is proper and legal?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

### REASONS

8. Workman filed affidavit of his evidence. Workman has stated that chargesheet was issued to him on 1-2-90. Enquiry Officer Shri Behel was appointed. Branch Manager had submitted report of incident to Shri P.S.Galod on 19-7-91. He was acquitted on 24-6-96, he was reinstated on 25-7-96. Enquiry was conducted in violation of natural justice even after his acquittal. He was not allowed opportunity to cross examine witnesses. Enquiry was conducted ex parte. At the time of his cross-examination, it was noticed that legality of enquiry was not challenged. Witness was cross examined on merit. In his further cross, workman says Enquiry Officers were changed. Lastly enquiry was conducted by Enquiry Officer Shri Sanghvi and Presenting Officer Shri Upadhyay. Documents of enquiry are produced. Copy of judgment of acquittal of workman are produced. The Defence Assistant had submitted that criminal case was pending against workman. Enquiry was stayed. During course of argument, no argument are advanced about legality of enquiry. The legality of order of punishment of withholding two increments of workman is also not matter of reference. I donot find any reason to hold enquiry conducted against workman is vitiated, management has right to conduct enquiry even after acquittal of workman. For above reasons, I record my finding in point No.1 in Affirmative.

9. Point No.2- Ist party has produced documents Exhibit W-1 judgment by Criminal Court. Workman was acquitted for offence under Section 467,468, 420 IPC on 24-6-96. As per document Exhibit W-2, enquiry against workman was reopened. As per Exhibit W-3, suspension of workman was revoked and workman was reinstated on 25-7-96. Exhibit W-4 is reply filed before ALC, W-6 is showcause notice issued to workman. As per Exhibit W-7, 2 increments of workman were stopped with cumulative effect and suspension period was treated as off duty. The order imposing punishment of withholding two increments and considering suspension period off duty is not included in the terms of reference. As suspension period of workman was treated off duty, workman cannot claim annual increments during suspension period. Therefore the claim of workman for 7 annual increments during suspension period is not legal. For above reasons, I record my finding in Point No.2 in Affirmative.

10. In the result, award is passed as under:-

- (1) The action of the management of stoppage of 7 increments during suspension period upon workman is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 10 मार्च, 2017

**का.आ. 738.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंदौर के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 68/07) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.03.2017 को प्राप्त हुआ था।

[सं. एल-12012/34/2007-आईआर (बी-1)]

बी. एस बिष्ट, अनुभाग अधिकारी

New Delhi, the 10th March, 2017

**S.O. 738.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 68/07) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in relation to the State Bank of Indore and their workman, which was received by the Central Government on 10.03.2017.

[No. L-12012/34/2007-IR (B-1)]

B. S. BISHT, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/68/07

Shri Lakshman Devangan,  
C/o Shri Janakram Verma,  
Bajrang Chowk, Mathpara near Kumhar Ghar,  
Raipur (Chhattisgarh).

...Workman

#### Versus

Assistant General Manager (Pancham),  
State Bank of Indore,  
Zonal Office, National Highway,  
Telibadha, Raipur (Chhattisgarh)

...Management

#### AWARD

Passed on this 6<sup>th</sup> day of January 2017

- As per letter dated 9-8-07 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-12012/34/2007-IR(B-I). The dispute under reference relates to:  
“Whether the action of the management of State Bank of Indore, Rajnandgad in terminating the services of Shri Laxman Devangan w.e.f. 25-5-06 inspite of regularizing his services is justified? If not, what relief he is entitled to?”
- After receiving reference, notices were issued to the parties. Workman submitted statement of claim at page 2/1 to 2/4. Case of Ist party workman is that he was engaged as permanent peon on daily wages by 2<sup>nd</sup> party from 24-7-01. Wages paid to him were increased to Rs.80,85,90,100 per day. He was not paid wages for holidays. He was working 6 days in a week. He completed 240 days continuous service during each of the year till his services were terminated on 25-5-06. He worked under various Branch Manager. On completion of 240 days continuous service, he acquitted status of regular employee under Section 25B of ID Act. His services were terminated without notice, retrenchment compensation was not paid to him. He worked for about 5 years. His services are illegally terminated violating Section 25-F,G,H N of ID Act. Policy of last come first go was not followed. After termination of his service, other persons were engaged by the management. Workman was not provided re-employment,. On such ground, Ist party prays for his reinstatement with backwages.

3. 2<sup>nd</sup> party filed Written Statement at Page 8/1 to 8/10 opposing claim of workman. 2<sup>nd</sup> party submits that it is established under State Bank of India Act 1959. It is engaged in banking business. The regular appointments of peon, messengers, security guard could be made following recruitment process advertising the post calling candidates from Employment Exchange. The services of the employees are covered by circulars and rules and regulations. Ist party workman was not engaged following rules. He is trying to get back door entry in Bank service. The regular employees are not doing work of cleaning toilets therefore for cleaning toilets, sweeping work, daily workers employed for 1-2 hours in a day as per exigency. They were paid wages. The casual employees are not entitled for regularization. Workman was engaged for few hours on daily wage basis, he was not regular peon appointed by the Bank. Ist party workman not completed 240 days continuous service. He is not entitled to protection of ID Act. It is reiterated that workman did not work more than 240 days during any of the year. His services were not terminated by the Bank. On such ground, 2<sup>nd</sup> party prays for rejection of claim.
4. Workman filed rejoinder at Page 9/1 to 9/3 reiterating his contentions in statement of claim.
5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of State Bank of Indore, Rajnandgad in terminating the services of Shri Laxman Devangan w.e.f. 25-5-06 inspite of regularizing his services is justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order

#### REASONS

6. The term of reference pertains to legality of denial of regularization and termination of services of workman. Management opposed relief claimed by Ist party filing Written Statement. Workman filed affidavit of his evidence. He stated that he was engaged as peon on 24-7-01. He was paid wages sometimes in bogus names. He worked more than 240 days during each year till termination of his service on 25-5-06. He was paid bonus Rs. 7990.30. his services were terminated in violation of Section 33 of ID Act during pendency of conciliation proceeding. In his cross-examination, Ist party workman says he worked in State Bank of Indore Regional Office, Motibagh, Raipur branch during the period 24-7-01 to 25-5-06. He was doing work of tying bundle of notes, verification work. He was doing work of peon. Appointment letter was not received by him. He was paid wages after 15 days or at end of month. In cross, it is not challenged that workman had worked 240 days during each of the year.
7. The documents Exhibit W-1 is reply submitted before ALC. Management has denied that workman was engaged on 24-7-01 as peon. Workman was engaged on daily wages. He was paid wages for his actual working days. Exhibit W-2, 3,4,5 are letters issued by ALC regarding payment of bonus to daily wage employees. As per document Exhibit W-6, Ist party workman was paid bonus of Rs.7990.13. Exhibit W-7/2,3 are received by workman under RTI Act. Exhibit W-7/2 shows bonus of Rs.7990.13 were paid. In Exhibit W-7/3, working days of workman for period 2003 to 2006 are shown. During the year 2003 to 2005, workman worked more than 240 days. In 2006, workman worked till month of May. Evidence of workman is corroborated by Exhibit 7/4. That workman worked more than 240 days during the year 2003 to 2006.
8. Management filed affidavit of witness of Shri Vikas supporting contentions of management that workman was engaged on daily wages, he not worked 240 days in any year. Management witness in his cross says he was not posted in Regional office of Motibagh branch during 2001 to 2006. He received information about present matter from Ex.Branch Manager Arun Kumar Bhavani. He claims ignorance whether any selection process was followed before engaging workman. Workman was orally engaged. In his cross, management's witness admitted documents Exhibit W-7/1 to 3. Those documents corroborates evidence of workman that he worked more than 240 days during the year 2003 to 2004. Management's witness in his further cross says notice of termination was not issued to workman. Retrenchment compensation was not paid to him. Presently cleaning work is carried through contractor. From evidence discussed above, it is clear that workman worked more than 240 days preceding 12 months of his termination. He was not served with termination notice, retrenchment compensation was not paid to him. Thus the termination of services of workman is illegal for violation of Section 25-F of ID Act. Therefore I record my finding in Point No.1 in Negative.
9. Point No.2- In view of my findings in Point No.1 termination of services of workman is illegal, question remains for consideration whether workman is entitled for reinstatement with backwages. Ist party in his cross examination says appointment letter was not received by him. Evidence of management's witness that workman

was engaged on daily wages without following any kind of selection process has not been shattered. Learned counsel for 2<sup>nd</sup> party Shri Vijay Tripathi relies on ratio held in case between-

M/A Ruby General Insurance Co.Ltd versus Shri P.P.Chopra reported in 1969(3)SCC-653. Their Lordship held normal rule is that in case of invalid order of dismissal, industrial adjudication would direct reinstatement of a dismissed employee. Nevertheless there would be cases where it would not be expedient to adopt such a course. In present case, reinstatement directed by Tribunal was inexpedient for the respondent had served the company only for 12 months. No one induced him to give up service. The company's establishment was small. The respondent is a stenographer in whom trust could be placed didnot inspite confidence in the Regional Manager.

The facts of above case are not comparable. Ratio cannot be applied to present case.

Next reliance is placed in ratio held in case between RajKumar versus Jalagaon Municipal Corporation reported in 2013(2)SCC-751. Their Lordship dealing with termination of services of casual labour, daily wager held there is no reason and justification to interfere with the orders passed by the two courts refusing to set aside termination of appellants. Termination is confirmed. Their Lordship dealing with the relief termination after 5 years service, quantum of compensation, payment of Rs.10,000 each to the appellants will not adequately compensate them hence compensation was enhanced to Rs. One Lakh.

In case between Ghaziabad Development Authority versus Ashok Kumar and another reported in 2008(4)SCC-261. Their Lordship dealing with violation of Section 6 N UP Industrial Dispute Act directed to pay compensation Rs.50,000/-.

In case between Jagbir Singh versus Haryana State Agriculture Marketing Board and another reported in 2009(15)SCC-327. Their Lordship awarded compensation Rs.50,000 considering the short service period.

In present case, workman had worked with 2<sup>nd</sup> party for about 5 years. In my considered view, considering the nature of employment and rate of wages paid, compensation Rs. One Lakh would meet the ends of justice. Accordingly I record my finding in point No.2.

10. In the result, award is passed as under:-

- (1) The action of the management of State Bank of Indore, Rajnandgad in terminating the services of Shri Laxman Devangan w.e.f. 25-5-06 inspite of regularizing his services is not proper and legal.
- (2) 2<sup>nd</sup> party is directed to pay compensation Rs. One Lakh to the workman.

Amounts per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R.B. PATLE, Presiding Officer

नई दिल्ली, 10 मार्च, 2017

**का.आ. 739.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार स्टेट बैंक ऑफ इंदौर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 75/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.03.2017 को प्राप्त हुआ था।

[सं. एल-12012/160/2008-आईआर (बी-1)]

बी. एस बिष्ट, अनुभाग अधिकारी

New Delhi, the 10th March, 2017

**S.O. 739.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 75/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in relation to the State Bank of Indore and their workman, which was received by the Central Government on 10.03.2017.

[No. L-12012/160/2008-IR (B-1)]

B. S. BISHT, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
JABALPUR****No. CGIT/LC/R/75/2009**

Shri P.D. Agrawal,

S/o Shri K.L.Agrawal,

R/o Rajinder Nagar, Gali No.10, Satna (MP).

...Workman

**Versus**

Dy. General Manager,

State Bank of Indore,

Zonal Office-I, Arera Hills,

Bhopal (MP)

Assistant General Manager,

State Bank of Indore, Regional Office,

765/766, Nagpur Road, Mahanadda,

Gorakhpur, Jabalpur.

...Management

**AWARD**Passed on this 13<sup>th</sup> day of February 2017

1. As per letter dated 28-8-09 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-12012/160/2008-IR(B-I). The dispute under reference relates to:

“Whether the action of the management of Dy.General Manager, State Bank of Indore, Bhopal in dismissing Shri P.D.Agrawal, Ex Clerk cum cashier from 30-11-2002 is legal and justified? If not, to what relief the workman concerned entitled to?”

2. After receiving reference, notices were issued to the parties. Statement of claim is filed by Ist party workman. Case of workman is that he joined service as clerk cum cashier on 16-1-84. He honestly discharged his duty with full devotion till 9-2-94, then he was suspended. Prior to it, any chargesheet was not served on him. That chargesheet was issued to him was baseless. Enquiry was conducted against him in violation of bipartite settlement. The theft of impugned drafts alleged against him could not be proved while Mr. M.M.Bang joined Satna branch as a Branch Manager since 26-7-93- the practice book were not in stock. Only workman was not visiting the strong room. Workman lonely visited inside strong room. Enquiry Officer clubbed Departmental Enquiry and judicial enquiry which were entirely different. Enquiry Officer overlooked Bank's procedure regarding keeping arrangement of draft books, duty of Branch Manager, Head Cashier. Enquiry Officer ignored statement of witness Shri Chandrawanshi, Accountant. Enquiry Officer recorded his finding holding workman guilty of charge No.1 contrary to the evidence of the witnesses. He had filed Writ Petition in Hon'ble High Court which he had withdrawn. Workman was not paid subsistence allowance as per the bipartite settlement dated 19-10-66. It is reiterated that the enquiry conducted against him was not proper. Principles of natural justice were not followed. Enquiry Officer did not consider evidence properly while holding guilty of Charge No.1. workman challenged punishment of dismissal filing appeal. Appellate Authority also did not properly decide his appeal. The findings of Enquiry Officer are perverse. Enquiry conducted against him is illegal. On such ground, workman prays for setting aside order of his dismissal and consequential benefits.
3. 2<sup>nd</sup> party management filed Written Statement opposing claim of workman. 2<sup>nd</sup> party submit that workman committed misconduct was the reason for his dismissal from service. That as per notification dated 20-7-2010, State Bank of Indore is acquired by State Bank of India. Ist party workman was appointed as clerk cum cashier on 6-1-84. He was officiating post of Head cashier during the period 22-7-93 to 24-7-93. Workman committed grave misconduct during said period. Chargesheet was issued to workman pertaining to committing theft of two draft books each containing 25 leaves bearing No. TL/SBD/1/26051 to 26075 and TL/SBD/1/26076 to 26100. After tearing certain leaves, it is alleged that particulars from said books were used for withdrawal of huge amounts from different banks total amount Rs.78,26,000/-. The withdrawal of amount using forged particulars was investigated and from draft numbers, it was noticed that drafts from concerned branch were misused.

Enquiry was conducted appointing Enquiry Officer and management representative. Workman was given opportunity for his defence. Principles of natural justice were followed. Statement of management witnesses were recorded. The witnesses of management were cross-examined. Enquiry Officer submitted his findings that misconduct alleged against workman were proved. Considering serious misconduct proved, as per report of Enquiry Officer, punishment of dismissal was imposed. Workman was suspended pending enquiry. The incident was also reported to Police Station, city Kotwal, Satna, offence No. 60/94 was registered against him. Case was pending before Ist Additional Session Judge, Satna till 24-5-95 and thereafter before CGM. The enquiry was pending seeking opinion of the department. Enquiry was not delayed. Workman was allowed opportunity for his defence. Chargesheet was not issued without substance. Subsistence allowance was paid as per the settlement. Considering proved charges, punishment of dismissal was imposed. In Writ Petition No. 5876/05 filed by workman, liberty was allowed to the workman to make application to the department engaging Advocate. Workman had admitted receipt of chargesheet, documents. Enquiry was properly conducted. Punishment of dismissal imposed against workman was upheld in the appeal. The action of the management is proper and legal.

4. Workman submitted rejoinder reiterating his contentions in statement of claim.
5. As per order dated 2-7-15, enquiry conducted against workman is found legal.
6. Considering pleadings on record and findings on enquiry, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	What is the effect of acquittal in criminal case on the charges alleged against workman?	Charge of theft of draft books by workman is not proved.
(ii)	Whether the charges alleged against workman are proved from evidence in Enquiry Proceedings?	Charge of theft of draft books by workman is not proved.
(iii)	Whether the punishment of dismissal imposed against workman is proper and legal?	In Negative
(iv)	If not, what relief the workman is entitled to?"	As per final order

#### REASONS

7. Point No. 1,2 : As per order dated 2-7-15, enquiry conducted against workman is found proper and legal. Workman has produced copies of judgment of his acquittal by criminal court at Exhibit W-9,10. Ist party workman was accused No.6 in the case for offence under Section 467, 420, 464, 409 read with 120-B IPC. All the accused including workman were acquitted. Enquiry Officer in his report held Charge No.2,3 alleged against workman are not proved. Charge No.1 pertaining to the theft of draft books was held proved. Reasons given by Enquiry Officer for holding workman guilty for charge No.1 relating to theft of draft books that there was no eye witness. However the workman was incharge of strong room and considering said aspect, Enquiry Officer held workman guilty of Charge No.1. That there is no eye witness to incident of theft, management's witness had not seen Ist party workman committing theft of draft books, finding recorded by Enquiry Officer under Charge No.1 is proved is contrary to the evidence of witness Chandravanshi. Management's witness Shri Chandravanshi in his cross says he had not seen workman committing theft of draft books. Besides above, Ist party workman was prosecuted for all offences alongwith others and they have been acquitted. The judgment of criminal court needs to be respected. Legal position is rather settled that judgment by criminal court normally should be respected. Documents of enquiry produced by management are not complete, it appears that original documents must have been produced in criminal case in which workman as acquitted. In view of judgment of acquittal of workman by criminal court and there was no eye witness to the incident, findings of Enquiry Officer are perverse. Therefore I conclude charge of theft of draft book alleged against workman is not proved from evidence in Enquiry Proceedings. For above reasons, I record my finding in Point No.1,2 that the charge is not proved.
8. Point No.3: In view of my finding in above points, charge of theft of draft book is not proved from Enquiry Proceedings, punishment of dismissal against workman cannot be sustained. Punishment of dismissal imposed against workman is illegal and deserves to be quashed when charge is not proved and dismissal of workman deserves to be set-aside. Therefore workman is entitled for his reinstatement with backwages. Accordingly I record my finding in Point No.3.
9. In the result, award is passed as under:-
  - (1) The action of the management of Dy.General Manager, State Bank of Indore, Bhopal in dismissing Shri P.D.Agrawal, ExClerk cum cashier from 30-11-2002 is not proper and legal.

- (2) Order of dismissal is quashed. 2<sup>nd</sup> party is directed to reinstate workman with continuity of service with backwages.

Amount of backwages as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R.B. PATLE, Presiding Officer

नई दिल्ली, 10 मार्च, 2017

**का.आ. 740.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 130/12) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.03.2017 को प्राप्त हुआ था।

[सं. एल-12011/50/2009-आईआर (बी-1)]

बी. एस बिष्ट, अनुभाग अधिकारी

New Delhi, the 10th March, 2017

**S.O. 740.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 130/12) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the management of State Bank of India and their workman, received by the Central Government on 10.03.2017.

[No. L-12011/50/2009-IR (B-1)]

B. S. BISHT, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

No. CGIT/LC/R/130/12

General Secretary,  
Dainik Vetan Bhogi Bank Karamchari Sangathan,  
Central Office, F-1, TriptiVihar,  
Opposite Engineering College,  
Ujjain (MP)

...Workman/Union

#### Versus

Chief General Manager,  
State Bank of India,  
Local Head Office, Bhopal.

...Management

#### AWARD

Passed on this 2<sup>nd</sup> day of February 2017

1. As per letter dated 17-2-2011 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-12011/50/2009-IR(B-I). The dispute under reference relates to:

“Whether the demand for payment of difference of wages from 1-12-96 to 12-12-05 to Shri BalramSahu, PTS, as per bipartite settlement is justified? To what relief the Union/workman is entitled to?”

2. After receiving reference, notices were issued to the parties. Statement of claim is submitted by General Secretary, Daily Wage Bank Employees Union on behalf of workman. The case of workman is that he was engaged as daily wage peon from 1-12-96. He was working 8 hours per day. He was paid wages Rs.45/- per day increased to Rs.55,60, 75, 80 per day. He completed 240 days continuous service. His services were terminated without notice in violation of Section 25-F of ID Act. Dispute raised by him challenging termination of his service in R/51/08 is pending. Ist party claims he was continuously working during the period 1-12-96 to 12-12-05 As per Sastri Award, he is entitled to pay scale wages. He claims difference of wages as per 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> bipartite settlement. That Karur Vaishya Bank, Bank of Maharashtra paid scale wages to its daily wage employees. 2<sup>nd</sup> party management not followed bipartite agreement. The act of the management is punishable



under Section 29 of ID Act. Ist party claimed difference of wages as per pay scale under 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> bipartite settlement.

3. 2<sup>nd</sup> party filed Written Statement opposing claim of workman. Case of 2<sup>nd</sup> party Bank is it is established under State Bank of India Act. That under Section 35(2) of the Act, State Bank of Indore is merged in State Bank of India as per notification dated 28-7-2010. As per the terms of merger, daily wage employees have no right to continue in service of the Bank. 2<sup>nd</sup> party had denied that workman was working continuously from 1-12-96 to 12-12-05. It is denied that workman was working 8 hours per day. Ist party workman is not entitled to scale wages under Bipartite settlement of Chapter 16 of Sastri Award. Document produced by Ist party are denied. Bipartite settlements deals with the scale wages of regular employees. Claim of Ist party workman is not tenable.
4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the demand for payment of difference of wages from 1-12-96 to 12-12-05 to Shri BalramSahu, PTS, as per bipartite settlement is justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

### REASONS

5. The term of reference pertains to claim of difference of wages as per scale wages to BalramSahu. Workman filed affidavit of his evidence. He has stated that he was engaged in State Bank of Indore merged in State Bank of India on wages Rs.45 per day from 1-12-96. He continuously worked for 240 days. He was working 8 hours in a day. He completed 240 days continuous service. He is eligible for scale wages 6<sup>th</sup> to 8<sup>th</sup> bipartite settlement. Workman not appeared for his cross-examination. His evidence cannot be considered.
6. Management's witness Manoj Kumar Verma filed affidavit of his evidence supporting contentions in Written Statement filed by management. That workman sometimes temporarily engaged on daily wage at Bilaspur branch during the period 96 to 2005. The benefits of scale wages under bipartite settlement are not payable to workman. Engagement of Ist party workman was on need base. He was intermittently engaged not continuously working. In his cross-examination, management's witness says he was not posted in Bilaspur branch during 96 to 2005. He denied documents referred to him. He also claims ignorance whether workman has raised dispute before ALC regarding claim for bonus. Management's witness admitted document Exhibit W-1. He claims ignorance at what rate workman was paid wages, whether bonus was paid to him during 97 to 2001.
7. As workman has not appeared for his cross examination, his evidence cannot be accepted. The document produced by Ist party pertaining to 6<sup>th</sup> bipartite settlement is not complete document. It is not proved by valid evidence. Exhibit W-1 produced by workman relates to payment of bonus Rs.10,685 during the year 2001-05. Merely on payment of bonus for above years, claim of Ist party workman for difference of scale wages as per 6<sup>th</sup> to 8<sup>th</sup> bipartite settlement is not established. For above reasons, I record my finding in Point No. in Negative.
8. In the result, award is passed as under:-
- (1) The demand for payment of difference of wages from 1-12-96 to 12-12-05 to Shri BalramSahu, PTS, as per bipartite settlement is not proper and legal.
- (2) Workman is not entitled to any relief.

R.B. PATLE, Presiding Officer

नई दिल्ली, 10 मार्च, 2017

**का.आ. 741.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1, दिल्ली के पंचाट (संदर्भ संख्या 118/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.03.2017 को प्राप्त हुआ था।

[सं. एल-41011/82/2012-आईआर (डीयू)]

बी. एस बिष्ट, अनुभाग अधिकारी

New Delhi, the 10th March, 2017

**S.O. 741.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 118/2012) of the Central Government Industrial Tribunal-

cum-Labour Court, No. 1, Delhi as shown in Annexure, in the industrial dispute between the management of Northern Railway and their workman, received by the Central Government on 10.03.2017.

[No. L-41011/82/2012-IR (B-1)]

B. S. BISHT, Section Officer

**ANNEXURE**

**IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, KARKARDOOMA COURT COMPLEX, DELHI**

**ID No.118/2012**

The Divisional Secretary,  
All India Station Masters Association,,  
C/o Shri Rajendra Prasad Sharma, T.I. Railway,  
Haridwar

...Workman

**Versus**

1. The Divisional Railway Manager,  
Northern Railway,  
Moradabad, Uttar Pradesh.
2. The Senior Divisional Personnel Officer,  
Northern Railway,  
Moradabad, Uttar Pradesh

...Managements

A reference was received from Ministry of Labour and Employment vide letter No.L 41011/82/2012-IR(B-1) dated 26.09.2012 under clause (d) of sub-section (1) and sub-section 2A of Section 10 of the Industrial Disputes Act, 1947(in short the Act) for adjudication by this Tribunal, terms of which are as under:

Whether the claim of the Association (All India Station Masters' Association) that Shri Rajendra Prasad, Station Master, while working at Birbhadra (Rishikesh) Railway Station during the period from 18.04.2004 to 04.03.2006 has worked for 12 hours per week over and above his weekly duty hours is legal and justified? To what relief the workman is entitled?'

2. Claim statement was filed by Shri Rajendra Prasad Sharma (hereinafter referred as the claimant) that he is presently working as Station Master under T.I. Haridwar Railway Station at Haridwar and is also a member of the All India Station Masters' Association. In April-May 2004, he was on the pay scale of Rs.5000-8000. However, management has taken work in overtime schedule during the period 18.04.2004 to 04.03.2006 but did not make payment of overtime charges to the claimant. Copy of the overtime schedule is enclosed as Ex.WW1/C.

3. It is the case of the claimant that as per rules applicable to the claimant, railway is duty bound to provide residential accommodation to its employees within 0.5 km and in case residential accommodation is provided, then the employee is duty bound to perform 72 hours duty in a week. If such accommodation is not provided within distance of 0.5 k.m., then working hours in a week comes to 60 hours as per railway manual, copy of which is Ex.WW1/3.

4. As per duty roster, the claimant was deputed at Virbhadra Railway Station, Rishikesh, Uttarakhand as Assistant Station Master and he had been performing duties for more than 72 hours in a week without residential accommodation. Management could not provide residential accommodation to the claimant within 0.5 kms. as per rules. Claimant made several representations for payment of overtime charges, but the management did not pay any heed to the request of the claimant, copy of representations are Ex.WW1/E and Ex.WW1/F. Action of the management has been alleged to be totally illegal and arbitrary.

5. It is further alleged that the claimant has filed a case before the Labour Enforcement Officer on 05.03.2007 for payment of arrears of wages. It was duly replied by the management vde Ex.WW1/H. However, management failed to pay the claimant his dues of overtime wages. Feeling aggrieved with the action of the management, claimant filed case before the Regional Labour Commissioner© Dehradun on 31.08.2010. None appeared on behalf of the management, as such management was proceeded ex-parte. Thereafter, the Assistant Labour Commissioner pronounced the order on 23.09.2011. Thereafter, the claimant approached the Assistant Labour Commissioner (C) but no positive action was taken by the management and finally reference in the above manner was made by the Government to this Tribunal for adjudication.

6. Claim was contested by the management, who filed written statement and took preliminary objections regarding concealment of material facts, maintainability and claim not being covered within the definition of 'workman' as defined under section 2(s) of the Act. On merits, it was admitted the claimant joined as Assistant Station Master and was working as such from 18.04.2004 to 04.03.2006 at Veerbhadra Railway Station where one Station Master and two Assistant Station Masters are deployed. At that time, there were two residential flats of type 2 allotted

to 2 Station Masters and 2 flats of type I were vacant. However, claimant has refused to occupy the Type I accommodation and claimant has taken residence in a private colony on rent. Management has specifically denied that in para 4 that the claimant is entitled to any overtime charges as per railway manual. It is denied that the management has taken duty of 72 hours from the claimant.

7. In the backdrop of the above-mentioned facts, my learned predecessor on the basis of pleadings of the parties, vide order dated 31.01.2013, has framed the following issues:

- (i) Whether the claimant is not a workmen within the meaning of section 2(s) of the Industrial Disputes Act, 1947?
- (ii) Whether the claim has not been properly espoused by the union?
- (iii) Whether claim is bad on account of delay/latches?
- (iv) As in terms of reference

8. Claimant, in order to prove his case against the management, examined himself as WW1 and tendered in evidence his affidavit Ex.WW1/A. He also tendered in evidence documents Ex.WW1/1 to Ex.WW1/17. Management in order to rebut the case of the claimant examined Shri Ram Chander Yadav, Senior Superintendent as MW1, who has tendered in evidence documents Ex.MW1/1 to Ex.MW1/5.

9. Arguments were advanced at the bar. Shri Yogesh advanced arguments on behalf of the claimant. Shri Man Mohan Singh, Authorized representative supported the action of the management. I have given my careful considerations to the arguments advanced at the bar and evidence adduced by the parties. My findings on the issues are as follows:

#### **Findings on Issue No.1**

10. It is the stand of the management that the claimant in the present case does not fall within the definition of 'workman' as defined under section 2(s) of the Act. He is performing duties of supervisory nature and his salary is also above the limit of Rs.10,000.00 per month. It was urged that in view of the nature of duties as well as salary of the workman, his case cannot be tried by the Industrial Tribunal. As such, the claim filed by the claimant herein is liable to be rejected for want of jurisdiction.

11. Per contra, it was strongly urged on behalf of the claimant that he is not at all performing duties of supervisory nature and there were other senior officials supervising his work, i.e Station Masters when he was posted at Veerbhadra Railway Station.

12. It is clear from pleadings of the parties that the claimant herein at the relevant time was working as Assistant Station Master. There is no specific evidence on record adduced by the management so as to show what are the nature of duties to be performed by the official holding post of Assistant Station Master. Simply because salary of the claimant is more than Rs.10,000.00 per month, would not take workman outside the scope and ambit of the expression 'workman' as defined under section 2(s) of the Act. It is now fairly settled from various pronouncements made by the Hon'ble Apex Court as well as various High Courts that initial onus lies on the workman or the employee to prove that he is a workman for the purpose of adjudication of the industrial dispute as defined under section 2(s) of the Act. When an employee is performing multifarious duties and question arises whether such an employee is a workman or not for the purpose of the Act, Tribunal or a Court must find out what are the primary and basic duties of such an employee, whether primary or main duties of such an employee is purely managerial or supervisory in nature or such duties performed is only incidental in the performance of other duties. In other words, dominant performance of employment must be taken into consideration and the gloss of some additional duty must be rejected while deciding the status and character of a person. Definition of 'workman' clearly shows that a person concerned would not cease to be a workman if he performs some supervisory duties but he must be a person who must be engaged in supervisory capacity. Thus, incidental performance of supervisory duties would not make a person employed in supervisory capacity. It is further clear from definition of workman, which is every exhaustive, that an employee in an industry must be employed to so some skilled or unskilled manner of work, supervisory work, technical or clerical work. If the work done by an employee is not of the nature as mentioned in the Act, he would not be a workman.

13. Existence of employer and employee relationship or master and servant relationship is essential for a person to be a workman within the proviso of definition of the term as per section 2(s) of the Act. Leading authority on this point is in the case of Dharangadhra Chemical Works Ltd. vs. State of Saurashtra (AIR (1957) SC 261) wherein while considering the ambit and scope of the definition of workman as contained in section 2(s) of the Act, it was held as under:

'Prima facie test which applies in order to determine the relationship is the existence of a right of control in respect of the manner in which the work is to be done. The nature or extent of control which is requisite to establish the relationship of employer and employee must necessarily vary from business to business and is by its very nature incapable of precise definition. The correct method of approach, therefore, would be to consider whether having regard

to the nature of the work there was due control and supervision by the employer. It is a question of fact to be decided by all the circumstances of the case. The fact that the persons so engaged are paid on piece rate basis and they could employ their own labour and pay for it could not be considered decisive factors to hold them as independent contractors when the employer has power of supervision and control at all stages of the work from beginning to end. What determines whether a person is a workman or an independent contractor is whether he has agreed to work personally or not. If he has, then he is a workman and the fact that he takes assistance from other persons would not affect his status.

14. The above test laid down in Dharangadhra's case (supra) has been reiterated in a number of decisions of the Supreme Court and also followed by High Courts.

15. Hon'ble Apex Court also in the case of Sonepat Co-operative Sugar Mills Ltd. vs. Ajit Singh [AIR 2005 (105) FLR I] has laid down the same criteria and observed that a person would come within the purview of the definition of the workman that (i) he is employed in any industry, (ii) performs any manual, unskilled, skilled, technical, operational, clerical or supervisory work.

16. Having regard to the legal position discussed above, it is clear that there is relationship of master and servant between the claimant and the management as this fact has been admitted, both in pleadings as well as in evidence. Management has not adduced any specific evidence on record so as to show that the claimant is performing duties purely 'managerial or supervisory nature' of duties. In this regard, it is appropriate to refer to the cross examination of Shri Ram Chander Yadav MW1, who has admitted that he is not even conversant with the facts of the present controversy. He has further admitted that in April 2004, claimant was working as Assistant Station Master at Veerbhadra Railway Sattion. And in that capacity he was to perform entire work at the railway station. But what kind of entire work needs to be performed by the claimant or such employees has not been specifically spelt out in the statement of this witness. Though this witness deposed that as Station Master, he has to take all the decisions independently yet there is no indicate in the statement of the witness as to kind of decisions possible were to be taken by the claimant at the relevant time. Tribunal cannot ignore the fact that at the relevant time there was only one Assistant Station master whereas there were other senior posts, as that of the Station Master who was performing supervisory and administrative functions. This witness has further admitted that one more Station Master was in charge of supervision of staff at the said station.

17. When Shri Ram Chander Yadav, MW1 was further cross examined on 03.06.2014, he has brought the duty roster Ex.MW1/W1 but this pertains to the residential accommodation and has nothing to do with the nature of duties being performed by the claimant herein. Thus, having overall regard to the evidence as well as nature of duties being performed by the claimant herein, it cannot be said that the claimant was performing purely duties of supervisory or managerial in nature as there are other officials in the hierarchy to take administrative and other important decisions. Accordingly, this issue is decided against the management and in favour of the claimant.

18. There is no specific evidence adduced by the management to the effect that the case of the claimant has not been properly espoused by the claimant. In this regard, it is appropriate to refer to the evidence of the claimant, i.e. his affidavit Ex.WW1/A. it is clearly averred in the statement of claim as well as Para 8 of the affidavit that he has approached the Labour Enforcement Officer regarding payment of overtime wages and this fact is also established from his representation dated 05.03.2007. It is also clear from perusal of order Ex.WW1/16 that an application was filed by the claimant herein wherein it was finally held that salary of the applicant is more than Rs.10,000.00 per month, thus case of the claimant is not covered under the purview of Payment of Wages Act, 1936 and Regional Labour Commissioner has no jurisdiction to decide the issue of payment of overtime wages. Tribunal cannot ignore one final fact that that in the present case reference has been made by the Government under Section 10 of the Act and the objection regarding espousal was never taken earlier by the management when the matter was before the RLC. Thus, Shri Yadav, MW1 in his affidavit Ex.MW1/A has not specifically taken objection regarding non-espousal of the dispute of the claimant and he has simply alleged in Para 14 of his affidavit that the claimant is not covered under definition of section 2(s) of the Act. When matter has been referred by the Government under Section 10 of the Act for adjudication of industrial dispute, normal presumption would be that same case been appropriately dealt with at various levels and there is espousal of the matter. This Tribunal cannot ignore the fact that the management has not appeared before the RLC, as such management was proceeded ex-parte. Now, it is too late in the day to say that matter was not properly espoused by the union of the claimant. It is clear from the statement of claim herein that the claimant herein is a member of All India Station Master Association and his card is Ex.WW1/1 and Ex.WW1/15 shows that his case has been espoused by the Union. There is no precise definition of the term espousal under the Act. However, from the various authorities rendered by the court, it is clear that espousal means that the industrial dispute is adopted by the union as its own dispute and considerable number of workmen have given support to the case of an individual claimant. It has been held in the Workers Union Vs. 7<sup>th</sup> Industrial Tribunal Calcutta (1994 FLR 701) that once a dispute is referred to a Tribunal by the appropriate Government, presumption would arise that such a dispute is properly espoused through the union. Since the management has not led any specific evidence regarding non-espousal of the present by the union of the claimant and matter has now been referred for adjudication under Section 10 of the Act, as such presumption arises in favour of the claimant. Accordingly this issue is also answered in favour of the claimant and against the management.

**Findings on Issue No.3**

19. It was halfheartedly urged on behalf of the management that reference was made by the Central government is quite late and the claimant has not approached the union at the earliest. This claimant is guilty of delay and laches in approaching the government as well as this court so late. To my mind, there is no merit in the contention of the management and legitimate claims of the parties cannot be defeated purely on legal or trivial grounds by the management by resorting to doctrine of delay and laches. It has been held in the case of Raghbir Singh vs General Manager, Haryana roadways (AIR 2014 SC weekly 5515) that reference can be made by the appropriate Government at any time and provisions of Limitation Act do not apply to proceedings under the ID Act. Normally reference made under Section 10 of the Act cannot be rejected by the Tribunal on account of delay and laches and the same view has been taken in Mange Lal vs State of Himachal Pradesh (2016 Lab.IC 380).

20. Yet, again in the case of Sapan Kumar Pandit Vs Uttar Pradesh State Electricity Board (AIR 2001 SC 2562). Question of limitation or delay and laches was considered. It was a case where Government referred a dispute to the Labour court for adjudication after 17 years from the date of termination of the workman. Management filed writ petition in the High Court seeking quashing of proceedings pending before the Labour Court. High Court quashed the reference made by the Government on the grounds of inordinate delay. However, when matter reached the Hon'ble apex Court, it was found that delay was on account of justified reasons and judgement of the High Court was set aside. There are observations that when a dispute has been referred by way of reference under Section 10 of the Act for adjudication, plea of the management regarding delay and laches, limitation etc. normally is to be rejected. Further, court held that if an industrial dispute is in existence from the date of reference, in that eventuality, power to make reference would always be there despite plea of delay and laches. In the wake of the legal position discussed above, plea of delay and laches raised by the management is without merit and the same is rejected. Issue is, therefore decided in favour of the claimant and against the management.

**Findings on Issue No.4**

21. Now, having said so, the vital question which requires to be answered by this Tribunal is whether the claimant is entitled to overtime wages for the duties which he has rendered. It is clear from the averments made in the statement of claim as well as affidavit Ex.WW1/A filed by the claimant that he was in the pay scale of Rs.5000-8000 during the period April-May 2004. He has admittedly performed his duties when was posted at Veerbhadra Railway Station and during the course of arguments it was also not denied that he was not given Type II accommodation to which he was entitled as per his official status and there was paucity of accommodation with the management. Perusal of Ex.WW1/2 reveals the schedule of overtime alleged to be performed by the claimant. It is further clear from perusal of duty roster Ex.WW1/3 that during this period claimant has performed duties of around 72 to 84 hours during the above period.

22. It was strongly contended on behalf of the claimant that in view of the Railway Manual as well as provisions of Railways Act, employee is entitled to overtime wages if he has performed duties beyond 60 hours and has also not been allotted accommodation as per his eligibility. Definition of 'roster' is defined in clause (h) of Railway Services Rules Ex.WW1/6. There is also mention in the above manual that such additional hours of work was to be reflected in duty roster of the railway servants concerned. There is no evidence adduced by the management to the contrary so far as performance of duty hours by the claimant is concerned. During the course of arguments, it was also not disputed that claimant who at the relevant time was Assistant Station Master is governed by employment rules applicable to railway employees and the claimant has also made representation to the higher authorities regarding payment of overtime wages as is evidence from Ex.WW1/12. There is no merit in the contention of the management that since the workman has claimed house rent allowance, as such, he is not entitled to relief of overtime wages. There is nothing in the railway manual to indicate that in case an employee performs overtime duties and is also not having Government accommodation, in that eventuality he would not get overtime payment except HRA. At this stage, it is also appropriate to refer to the statement of Shri Ram Chander Yadav MW1. He has produced duty roster of the claimant which is Ex.MW1/W1 and he has clearly admitted that no government accommodation was given to the claimant in the year 2002. Management has inadvertently indicated in Ex.MW1/W1 that residential accommodation was allotted to the claimant. However, fact of the matter is that no such accommodation was ever allotted during the said period to the claimant. He further admitted that claimant was entitled to type II accommodation and no such accommodation was available, as a result of which no such accommodation could be allotted to him. There is nothing on record to show that the claimant was ever offered accommodation (Type II), which he has refused.

23. It is, thus, clear from the discussions made herein above that there is clear cut evidence on record to suggest that the claimant has performed duties for more than 72 hours and no suitable accommodation was allotted to the claimant as per his status. Since the claimant has admittedly given duties of more than 72 hours, as such, this Tribunal is of the considered opinion that the claimant is entitled to payment of overtime wages for the period from 18.04.2004 to 04.03.2006, for duties performed by him beyond the stipulated limit of 60 hours a week. An award is accordingly passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

A.C. DOGRA, Presiding Officer

Dated : March 3, 2017

नई दिल्ली, 10 मार्च, 2017

**का.आ. 742.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 99/11) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.03.2017 को प्राप्त हुआ था।

[सं. एल-12011/36/2011-आईआर (बी-1)]

बी. एस बिष्ट, अनुभाग अधिकारी

New Delhi, the 10th March, 2017

**S.O. 742.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 99/11) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the management of State Bank of India and their workman, received by the Central Government on 10.03.2017.

[No. L-12011/36/2011-IR (B-1)]

B. S. BISHT, Section Officer

### ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/99/11

General Secretary,  
Anusuchit Jaati Karmchari Kalyan Parishad,  
F-1, Tripti vihar,  
Opp. Engineering College,  
Ujjain (MP)

...Workman/Union

### Versus

Chief General Manager,  
State Bank of India  
Local Head Office,  
Hoshangabad Road, Bhopal.

...Management

### AWARD

Passed on this 2<sup>nd</sup> day of February 2017

1. As per letter dated 20-10-2011 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-12011/36/2011-IR(B-I). The dispute under reference relates to:

“Whether the demand of the Union, Dainik Vetan Bhogi Karamchari Parishad for payment of difference of wages 14-6-93 to 30-7-97 and from November 2003 to 6-12-2005 to Amritlal Ahirwar as per scale wages is legal and justified? To what relief the worker is entitled to?”

2. After receiving reference, notices were issued to the parties. Statement of claim is submitted by General Secretary, Daily Wage Bank Employees Union on behalf of workman. The case of workman is that he was engaged as daily wage peon from 14-6-93. He was working 8 hours per day. He was paid wages Rs.15/- per day increased to Rs.20,35,80,90 per day. He completed 240 days continuous service. His services were terminated without notice in violation of Section 25-F of ID Act. Dispute raised by him challenging termination of his service in R/51/08 is pending. Ist party claims he was continuously working during the period 14-6-93 to 6-12-05. As per Sastri Award, he is entitled to pay scale wages. He claims difference of wages as per 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> bipartite settlement. That Karur Vaishya Bank, Bank of Maharashtra paid scale wages to its daily wage employees. 2<sup>nd</sup> party management not followed bipartite agreement. The act of the management is punishable under Section 29 of ID Act. Ist party claimed difference of wages as per pay scale under 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> bipartite settlement.

3. 2<sup>nd</sup> party filed Written Statement opposing claim of workman. Case of 2<sup>nd</sup> party Bank is it is established under State Bank of India Act. That under Section 35(2) of the Act, State Bank of Indore is merged in State Bank of India as per notification dated 28-7-2010. As per the terms of merger, daily wage employees have no right to continue in service of the Bank. 2<sup>nd</sup> party had denied that workman was working continuously from 4-6-93 to 6-12-05. It is denied that workman was working 8 hours per day. Ist party workman is not entitled to scale wages under Bipartite settlement of Chapter 16 of Sastri Award. Document produced by Ist party are denied. Bipartite settlements deals with the scale wages of regular employees. Claim of Ist party workman is not tenable.
4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the demand of the Union, Dainik Vetan Bhogi Karamchhari Parishad for payment of difference of wages 14-6-93 to 30-7-97 and from November 2003 to 6-12-2005 to Amritlal Ahirwar as per scale wages is legal and justified?	In Negative
(ii)	If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

### REASONS

5. The term of reference pertains to claim of difference of wages as per scale wages to Amritlal Ahirwar. Workman filed affidavit of his evidence. Workman has stated that he was working in the Bank from 14-6-93 to 30-7-97 and again from 1-11-03 to 6-12-05. He was paid daily wages Rs.5, 20, 35, in Ist spell and 80,90 in 2<sup>nd</sup> spell of his engagement. He has raised dispute about termination of his services. He claims to be eligible for scale wages under Bipartite settlement. In his cross-examination, workman says he was member of the Union he was first appointed on 14-6-92. Appointment letter was not given to him. He was doing work of cleaning, sweeping, clearing cheque. He was appointed by Branch Manager Prahlad because of his acquaintance. He was paid wages for working days 6 days in a week.
6. Management's witness Umashankar Gupta filed affidavit of his evidence supporting contentions of management that workman was not engaged from 4-6-93. Workman was not continuously working till 6-12-05. Bipartite settlement referred by workman deals with the revision of scale wages payable to permanent clerical subordinate staff of erstwhile State Bank of Indore. Management's witness in his cross says he was not posted in Vijaypur branch during the period 1993 to 1997, 2003 to 2005. That before engaging workman, any selection process was not followed. He not received information from earlier Branch Managers. No permission was taken from Controlling Authorities before engaging workman on daily wages. He did not recollect pay scale given to the peon. Workman was not paid wages as per pay scale. As workman was engaged on daily wages, scale wages cannot be paid to him. Workman produced documents Exhibit W-1. Payment of wages to VeerSingh Exhibit W-2 is copy of Section 29 ID Act. Exhibit W-3 is authorization letter by Bank to Deepak Nikhra. Exhibit W-4 is letter regarding payment of bonus to Ist party workman. The details of the calculation are annexed with it. Any of those documents are not directly relevant for deciding entitlement of Ist party workman to scale wages. Copy of bipartite settlement 1966 is produced by Ist party. The wages payable to part time staff are provided working 3 hours in a week and discretion of the Bank. Working 2-6 hours in a week- Rs.15 per month, working for 6-13 hours a week- 1/3<sup>rd</sup> scale wages, working 13 to 19 hours per week- half of pay scale wages. Evidence of Ist party that he was working 8 hours per day for cleaning, sweeping work is not reliable. Workman has produced documents regarding norms for payment of wages in February 1997. If area of the branch is less than 1200 sq.ft, part time consolidated wages Rs.80 per day, 1200 – 2000sqft area- 1/3<sup>rd</sup> scale wages, 2000-3500 sq.ft- working hours 13-19 hours- half scale wages etc. The pleadings and evidence of workman are not disclosing area of the branch of the Bank. Therefore claim of workman for scale wages cannot be accepted. For above reasons, I record my finding in Point No.1 in Negative.
7. In the result, award is passed as under:-
- (1) The demand of the Union, Dainik Vetan Bhogi Karamchhari Parishad for payment of difference of wages 14-6-93 to 30-7-97 and from November 2003 to 6-12-2005 to Amritlal Ahirwar as per scale wages is not proper and legal.
  - (2) Workman is not entitled to any relief.

R.B. PATLE, Presiding Officer

नई दिल्ली, 10 मार्च, 2017

**का.आ. 743.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आईसीआईसीआई बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 31/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.03.2017 को प्राप्त हुआ था।

[सं. एल-12011/48/2008-आईआर (बी-1)]

बी. एस बिष्ट, अनुभाग अधिकारी

New Delhi, the 10th March, 2017

**S.O. 743.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 31/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the management of ICICI Bank and their workman, received by the Central Government on 10.03.2017.

[No. L-12011/48/2008-IR (B-1)]

B. S. BISHT, Section Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/31/2010

General Secretary,  
Dainik Vetan Bhogi Bank Karamchari Sangathan,  
Central Office, F-1, Tripti Vihar,  
Opposite Engineering College,  
Ujjain (MP)

...Workman/Union

#### Versus

Regional Director,  
ICICI Bank, Regional office,  
Bank Towers, Bandra, Kurla, Mumbai

...Management

### AWARD

Passed on this 7<sup>th</sup> day of February, 2017

1. As per letter dated 10-7-09 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-12011/48/2008-IR(B-I). The dispute under reference relates to:

“Whether the action of the Assistant General Manager, The Bank of Rajasthan Ltd., Regional Office, Indore in not regularizing services of Smt. Lakshmbai W/o Shri Shankarlal, Dainik Vetan Bhogi Safai Karmachari is justified? If not, what relief is the applicant concerned entitled?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim through General Secretary, Dainik Vetan Bhogi Bank Karamchari Sangathan at Page 8 to 12. Case of Ist party Laxmi Bai is the branch of the Bank was opened on 29-3-05. She was engaged as permanent peon/ sweeper since opening of the bank for cleaning, sweeping, filling water etc. work. She was working 8 hours in a day. She worked with devotion. She was paid Rs.750 as sweeper and 750 for work of peon in name of her husband Sankarlal. Her husband was not working in the Bank. The payment was made in his name obtaining his signature. She completed 240 days continuous service during each of the year. On 31-5-07, her services were terminated without notice. She was not paid retrenchment compensation. Ist party workman had challenged his termination raising dispute. She had also raised dispute regarding non-payment of bonus. During conciliation proceeding, she was reinstated in service. Ist party workman has further contented that she was paid bonus for the year 2007 by cheque considering payments of Rs.749.97. After reinstatement during conciliation proceedings, he is continuously working with devotion. Management has stopped payment of wages in name of



her husband Shankarlal. On 12-2-08, she raised dispute before ALC, Jabalpur for regularization in service. Management had submitted parawise reply to the application contending that sanction post is not vacant at Jabalpur branch of the Bank. Other person was working on the post of pen. On such contentions, Ist party is claiming that she should be regularized on the post of peon and scale wages be paid to her.

3. 2<sup>nd</sup> party filed exhaustive Written Statement opposing claim of workman. 2<sup>nd</sup> party raised objection that Shri R.Nagwanshi is a dismissed employee of Bank and he is not competent to represent the workman relying ratio held in various cases. It is contended that Shri R.Nagwanshi cannot represent workman under guise of Union activities. Bank of Rajasthan is merged in ICICI Bank carrying business business. For appointment of sub staff and Class III, IV employees, Bank has its rules and regulations. Branch Manager has no authority to appoint award staff, peon, messenger, security guard. Ist party Laxmibai was not appointed on any post in the Bank. Appointment letter was not issued to her. She was engaged for cleaning, sweeping work. She was paid wages for her working as casual labour. She is not eligible for regularization. That casual labours engaged for 20-25 minutes in a day are not eligible for regularization. It is reiterated that Ist party was not appointed following recruitment rules as peon. It is denied that wages were paid in name of her husband Sankarlal. It is submitted that Ist party workman had not worked for 240 days during any of the year. She is not entitled for notice or retrenchment compensation under Section 25-F of ID Act. That casual labours cannot be regularized. 2<sup>nd</sup> party has referred to ratio held in various cases in Written Statement. 2<sup>nd</sup> party submits that Ist party is not entitled for regularization.
4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the Assistant General Manager, Bank of Rajasthan Ltd., Regional Office, Indore in not regularizing services of Smt.Lakshmibai W/o Shri Shankarlal, Dainik Vetan Bhogi Safai Karmachari is justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

#### REASONS

5. The terms of reference pertains to denial and regularization of Ist party Laxmibai W/o Shankarlal. Ist party filed affidavit of her evidence. In her affidavit of evidence, Ist party has stated that from 29-3-05, she was engaged for cleaning sweeping work in the Bank of Rajasthan Jabalpur branch. She was paid Rs.750 per month in her name. Rs.750 was paid in name of her husband Shankarlal who did not work in the bank. On 29-5-07 her services were terminated . she raised dispute before ALC Jabalpur. She also claimed bonus. She was paid wages in her name. as per 9<sup>th</sup> bipartite agreement dated 27-4-10, she was paid arrears Rs.8680 as per 1/3<sup>rd</sup> scale wages. Amount of Rs.560 was deposited in her Bank account. She is eligible for 1/3<sup>rd</sup> scale wages as per 9<sup>th</sup> settlement dated 1-5-2010. On 12-8-2010, Bank of Rajasthan merged in ICICI Bank. In her cross, Ist party Laxmibai says her age is 37 years. She holds educational qualification 5<sup>th</sup> standard. She denies to have been engaged as casual labour. She was paid wages every day. Before her engagement, Branch Manager Prakash Joshi had interviewed her, appointment letter was issued to her. Document is not produced in the case. She is still working in the bank. She denied suggestion that she is engaged as casual labour.
6. Management's witness Shristipriya filed affidavit of her evidence supporting whole contentions in Written Statement filed by the management. In her cross-examination, management's witness claims ignorance whether at the time of terminating workman, information was taken from ALC. Management's witness claims ignorance whether after settlement dated 10-10-07, workman was reinstated on work. Management's witness claims ignorance about payment of bonus to Ist party during conciliation proceeding and payment of arrears by cheque to Ist party. Management's witness claims ignorance whether after merger of Rajasthan Bank in ICICI Bank, how the payments were to Ist party. That documents about Ist party working on contract basis are not produced. Witness of management was unable to tell why pay of Ist party was reduced. Witness claims ignorance whether muster roll is maintained or not, whether Ist party is still working in the branch. Management's witness has shown ignorance to all the questions asked to her. From evidence in cross of Ist party, it is clear that she has not produced appointment letter.
7. Documents produced by Ist party Exhibit W-1 is copy of application submitted before ALC, Jabalpur pertaining to her claim. Exhibit W-2 is copy of notice issued by ALC, Jabalpur. Exhibit W-3, 4 are copies of cheques about payment of Rs. 749.97 to Ist party Laxmibai. Exhibit W-5 is notice issued by the ALC. Exhibit W-6,7 are reply submitted by management opposing claim of Ist party before AL. Exhibit W-8 is copy of letter dated 31-8-99. Said letter provides payment of Rs, 50 per month when area of branch is 800 sq ft. Rs.440 per month when area

is 801 to 1250 sq.ft, 1/3<sup>rd</sup> scale pay when area is 1251 to 3500 sq.ft, half pay scale when area is 3501 to 5000 sq.ft. 3/4<sup>th</sup> scale wages when area is 5001 to 7000sq.ft. the documents Exhibit W-8 is not relevant for deciding claim for regularization of Ist party. Exhibit W-9 is copy of failure report. The evidence of Ist party about her working more than 240 days continuous service is not supported by documentary evidence.

8. Learned counsel for 2<sup>nd</sup> party Shri Ashish Shrotri submits that merely working more than 240 days doesnot give right for regularization to Ist party Laxmibai.
9. Shri Shrotri relies on ratio held in

Chandra Shekhar Azar Krishi Eva Prodyogiki Vishwavidyalaya versus United Trades Congress and another reported in 2008(2)SCC-552. Their Lordship dealing with Section 6 N of UP Industrial Act held completion of 240 days continuous in a year, compensation Rs.50,000 was allowed.

In present case, Ist party workman is still continuing in employment of Bank on daily wages. Whether continuing Ist party Laxmibai on daily wages amounts to unfair labour practice under Item 10 Schedule V of ID Act was also addressed by counsel for 2<sup>nd</sup> party Shri Shrotri. On the point Shri Shrotri relies on ratio held in case between

Siemens Limited and another versus Siemens Employees Union and another reported in 2011(9)SCC-775. In para -18 of the judgment, their Lordship observed before proceeding further in this matter, this Court proposes to examine the concept of unfair labour practice and the way it has been dealt with under the Maharashtra Act and also under the ID Act,. Any unfair labour practice within its very concept must have some elements of arbitrariness and unreasonableness and if unfair labour practice is established the same would bring about a violation of guarantee under Article 14 of the constitution. Therefore it is axiomatic that anyone who alleges unfair labour practice must plead it specifically and such allegations must be established properly before any forum can pronounce on the same. It is also to be kept in mind that in the changed economic scenario, the concept of unfair labour practice is also required to be understood in the changed context. Today every State, which has to do the mantle of a welfare state, must keep in mind that twin objectives of industrial peace and economic justice and the courts and statutory bodies while deciding what unfair labour practice is must also be cognizant of the aforesaid twin objects.

In present case in statement of claim workman has not pleaded about unfair labour practice on part of 2<sup>nd</sup> party. Therefore it is not possible to hold that 2<sup>nd</sup> party is engaged in unfair labour practice under Item 10 Schedule V of ID Act. For reasons discussed above, Ist party is not entitled to regularization in service. For above reasons, I record my finding in Point No.1 in Affirmative.

10. In the result, award is passed as under:-
  - (1) The action of the Assistant General Manager, Bank of Rajasthan Ltd., Regional Office, Indore in not regularizing services of Smt.Lakshmibai W/o Shri Shankarlal, Dainik Vetan Bhogi Safai Karmachari is proper and legal.
  - (2) Smt. Laxmibai is not entitled to any relief.

R.B. PATLE, Presiding Officer

नई दिल्ली, 10 मार्च, 2017

**का.आ. 744.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 72/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.03.2017 को प्राप्त हुआ था।

[सं. एल-12011/11/2011-आईआर (बी-1)]

बी. एस बिष्ट, अनुभाग अधिकारी

New Delhi, the 10th March, 2017

**S.O. 744.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 72/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the employers in relation to the State Bank of India and their workman, which was received by the Central Government on 10.03.2017.

[No. L-12011/11/2011-IR (B-1)]

B. S. BISHT, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
JABALPUR****No. CGIT/LC/R/72/2011**

General Secretary,  
Dainik Vetan Bhogi Bank Karamchari Sangathan,  
Central Office, F-1, Tripti Vihar,  
Opposite Engineering College,  
Ujjain (MP)

...Workman/Union

**Versus**

Chief General Manager,  
State Bank of India  
Local Head Office,  
Hoshangabad Road, Bhopal.

...Management

**AWARD**Passed on this 8<sup>th</sup> day of February, 2017

1. As per letter dated 13-7-2011 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-12011/11/2011-IR(B-I). The dispute under reference relates to:  
 "Whether the demand of Dainik Vetan Bhogi Bank Karamchari Sangathan for payment of difference of wages as per pay scale to Shri Peerulal Malviya for the period from 1-5-99 to 14-10-08 is legal and justified? To what relief the Union/workman is entitled?"
2. After receiving reference, notices were issued to the parties. Statement of claim is submitted by Dainik Vetan Bhogi Bank Karamchari Sangathan Union on behalf of workman. Case of Ist party workman is that he was engaged as peon in Agricultural branch of the Bank, Saranpur on 1-5-99. He was working 8 hours every day. He completed 240 days continuous service during each of the year. He was paid Rs.910 per month which was increased to Rs.1000. for additional work, he was paid Rs.50 and for work of filling water Rs.15 per day. His services were terminated without notice or opaying retrenchment compensation on 14-10-08. He challenged termination of his service raising separate dispute. Workman claims that he is entitled for pay scale as per 6<sup>th</sup> to 9<sup>th</sup> bipartite settlement. Para 5 to 8 in chapter 16 of Sastry Award classified the employees. Temporary peon is entitled for scale wages. 2<sup>nd</sup> party has violated bipartite settlement which is punishable under Section 29 of ID Act. On such ground, Ist party prays for difference of scale wages as per 6 to 9<sup>th</sup> settlement.
3. 2<sup>nd</sup> party filed Written Statement opposing claim of Ist party workman. 2<sup>nd</sup> party submits that workman was working in canteen which is run by Local Implementation Committee. Bank has no control or supervision over canteen boy employed by Local Implementation Committee. That workman was engaged in staff canteen in May 99. He was engaged in canteen after 2008. Workman was also working for cleaning sweeping work in the bank for which he was paid 35-40 Rs. Per day. Working days of workman are 27 days in 1997-98, 85 days in 1999, 16 days in 2004-05, 5 days in 2005-06. 2<sup>nd</sup> party has reiterated that Ist party workman is not its employee. Workman has not completed 240 days continuous service. Ist party was engaged purely on temporary basis for cleaning purpose. He is not entitled to scale wages as per bipartite settlement. On such ground, 2<sup>nd</sup> party submits that claim of Ist party deserves to be dismissed.
4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the demand of Dainik Vetan Bhogi Bank Karamchari Sangathan for payment of difference of wages as per pay scale to Shri Peerulal Malviya for the period from 1-5-99 to 14-10-08 is legal and justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

**REASONS**

5. The term of reference pertains to demand for difference of wages for Ist party workman Peerulal Malviya. Claim of workman is opposed by management. Workman filed affidavit. However he did not appear for cross examination. Union Representative Shri R.Nagwanshi submitted in writing on 15-10-15 not to adduce oral evidence. The document Exhibit M-1 produced by management entries about different payments made by the Bank. As Ist party has not adduced evidence w.r.t. his working hours . the copies of settlements 6 to 9 are also not produced. Claim of workman is not supported by any evidence. Agreement dated 7-2-97 produced on record. The wages payable to part time sweepers, farrash varies as per the area of the bank. When Ist party workman has not adduced evidence about his working hours in the Bank, area of the Bank, claim for difference of wages of Ist party workman is not established.
6. Shri R.Nagwanshi representative of Union submitted copies of award in R/53/10, 79/11. Similar view cannot be taken in present case. As workman has not adduced evidence in support of his claim, therefore I record my finding in Point No.1 in Negative.
7. In the result, award is passed as under:-
- (1) The demand of Dainik Vetan Bhogi Bank Karamchari Sangathan for payment of difference of wages as per pay scale to Shri Peerulal Malviya for the period from 1-5-99 to 14-10-08 is not legal and proper.
  - (2) Workman is not entitled to any relief.

R.B. PATLE, Presiding Officer

नई दिल्ली, 10 मार्च, 2017

**का.आ. 745.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 26/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.03.2017 को प्राप्त हुआ था।

[सं. एल-12011/73/2012-आईआर (बी-1)]

बी. एस बिष्ट, अनुभाग अधिकारी

New Delhi, the 10th March, 2017

**S.O. 745.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. 26/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in Annexure, in the industrial dispute between the management of State Bank of India and their workman, which was received by the Central Government on 10.03.2017.

[No. L-12011/73/2012-IR (B-1)]

B. S. BISHT, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL—CUM—LABOUR COURT,  
JABALPUR**

**No. CGIT/LC/R/26/2013**

General Secretary,  
Dainik Vetan Bhogi Bank Karamchari Sangathan,  
Central Office, F-1, Tripti Vihar,  
Opposite Engineering College,  
Ujjain (MP)

...Workman/Union

**Versus**

Chief General Manager,  
State Bank of India  
Local Head Office,  
Hoshangabad Road, Bhopal.

...Management

**AWARD**

Passed on this 7<sup>th</sup> day of February, 2017

1. As per letter dated 1-2-2013 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D. Act, 1947 as per Notification No. L-12011/73/2012-IR(B-I). The dispute under reference relates to:  
 "Whether Shri Manhor Aadiwal is entitled for full wages as paid to permanent peon for the period from 12-12-94 to 26-10-09? (2) Whether State Bank of India is a Banking Industry? (3) The nearest tribunal is CGIT, Jabalpur.
2. After receiving reference, notices were issued to the parties. Union submitted statement of claim on behalf of workman. The case of Ist party workman is that he was engaged as peon in the Bank from 12-12-94. He was working 8 hours in the day. He completed 240 days continuous service. From 12-12-94 to 31-12-97, he was paid skill wages, from 1-1-98 to 28-2-06, he was paid wages Rs.30 per day. From 1-3-06 to 26-3-10, he was paid Rs.50 per day. After completing 240 days continuous service, when he claimed regularization, bonus and revised pay, his services were terminated without notice, he was not paid retrenchment compensation he challenged termination of his service R/20/13 is pending. Ist party workman submits that for the period 12-12-94 to 26-3-10, he is entitled to scale wages under 6 to 9 bipartite settlement. Details of pay scales are shown in Para 4 of statement of claim. That as per Chapter 16 of Sastry Award, para 5 to 8, Bank employees are classified that he was working under different Branch Managers. He is not paid wages under Bipartite Agreements. Management committed violation of the settlement which is punishable under Section 29 of ID Act. Workman claims difference of wages as per 6<sup>th</sup> to 9<sup>th</sup> bipartite settlement with interest.
3. 2<sup>nd</sup> party filed Written Statement opposing claim of Ist party workman. 2<sup>nd</sup> party has contented that workman was engaged temporarily on daily wages at city branch, Indore. He was not appointed on permanent basis following recruitment process. Engagement of workman was on administrative exigency and not against vacant post. 2<sup>nd</sup> party reiterates that the claim of workman for scale wages is not tenable. The Bipartite Settlement are not applicable to persons engaged on temporary basis. Settlement are applicable only to permanent employees subordinate and clerical cadre. It is further reiterated that Bipartite Settlement that all Bank's employees Association, National Confederation of Bank Employees entered normally for a period of 5 years. Union represents cause of permanent employees of the Bank. The benefit under bipartite settlement are not payable to temporary persons engaged on daily basis. 2<sup>nd</sup> party denied that workman worked 8 hours every day. It is also denied that he completed 240 days in any calendar year. That workman intentionally not filed complete copy of settlement. He is guilty of suppression of material facts. It is submitted that Chapter 16 of Sastry Award nowhere classifies Bank's employees to provide scale wages to daily wagers. That 2<sup>nd</sup> party has not violated provisions of any bipartite settlement. 2<sup>nd</sup> party has referred to ratio held in various cases reiterating that workman is not entitled to any relief.
4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether State Bank of India is a Banking Industry?	In Affirmative
(ii) Whether Shri Manhor Aadiwal is entitled for full wages as paid to permanent peon for the period from 12-12-94 to 26-10-09?	In Negative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

**REASONS**

5. Term of reference pertains to whether SBI is covered as Banking Industry. In Written Statement filed by 2<sup>nd</sup> party, it is reiterated that 2<sup>nd</sup> party is carrying banking business. Ist party workman has not adduced evidence. Shri Ram Nagwanshi submitted in writing on 15-10-15 not to adduce oral evidence of workman. 2<sup>nd</sup> party has also not adduced evidence. However considering 2<sup>nd</sup> party is engaged in banking business, it is covered as industry under Section 2(j) of ID Act. For above reasons, I record my finding in Point No.1 in Affirmative.
6. Point No.2- The term of reference pertains to whether workman is entitled to full wages as paid to permanent peon during the period 12-12-94 to 26-10-09. Ist party has not adduced oral evidence. The documents produced by Ist party workman Exhibit W-1 is copy of reply submitted before RLC. In Para-2, 2<sup>nd</sup> party pleaded that workman was paid wages Rs.30,50 per day as per the working hours. Exhibit W-2 is reply submitted before RLC, Bhopal. 2<sup>nd</sup> party has submitted payments were made to daily wages from petty cash by voucher. Exhibit

W-3 to 6 are notices issued by RLC. Management has also not adduced evidence in the matter. Copy of minutes of discussion between management and Union dated 7-2-97 is produced on record pertaining to norms for payment. It was mutually agreed between management and Union Representative that for branch having area less than 1200 sq.ft wages payable to attendant, sweeper Rs.80 per month for less than 3 hours per week, Rs.190 per month for 3 to 6 hours per week, if area is 1200 sq and less than 2000sq ft – 1/3<sup>rd</sup> wages for period between 6 hours to 13 hours per week, if area is between 2000 sq ft to 3500 sq ft – ½ scale wages for working more than 13 hours to 19 hours per week, if area is 3500 sq ft-3/4<sup>th</sup> scale wages for working more than 19 hours to 29 hours per week, for area 5000 sq.ft and above full time on full wages. Workman has not adduced evidence w.r.t. the area of the Bank and his weekly working hours. In absence of such evidence, workman cannot be allowed benefits as per above settlement.

7. On the point of claim of pay scale, learned counsel for 2<sup>nd</sup> party Shri Shrotri relies on ratio held in Case between State of Haryana and another versus Tilak Raj and others reported 2003(6)SCC-123. Their Lordship dealing with equal pay for equal work held the principle is not an abstract one. Applicability of the principle requires complete and wholesale identity between a group of employees claiming identical pay scales and others who have already earned such pay scales.
- In case between State of Punjab and others versus Surinder Singh and another reported in 2007(13)SCC-231. Their Lordship dealing with equal pay for equal work. Held the principle has undergone a sea change since its initial recognition. Presently principle applies if identity between two employees is complete and total. Daily wager, held having not undergone process of regular selection cannot therefore compare himself with a regular employee.
8. Shri R. Nagwanshi submitted copy of award passed in R/7/11 & R/53/0. Evidence adduced in those references was considered while passing the award. In present case, workman has not adduced evidence. For reasons discussed above, I record my finding in Point No.1 in Negative.
9. In the result, award is passed as under:-
- (1) The workman Shri Manhor Aadiwal is not entitled for full wages as paid to permanent peon for the period from 12-12-94 to 26-10-09.
  - (2) Workman is not entitled to any relief.

R.B. PATLE, Presiding Officer

नई दिल्ली, 10 मार्च, 2017

**का.आ. 746.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जेक एअर सर्विस प्रा. लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नं. 2 दिल्ली के पंचाट (संदर्भ संख्या 01/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.03.2017 को प्राप्त हुआ था।

[सं. एल-11012/02/2011-आईआर (सीएम-1)]

एम. के सिंह, अनुभाग अधिकारी

New Delhi, the 10th March, 2017

**S.O. 746.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 01/2012) of the Central Government Industrial Tribunal-cum-Labour Court, No. 2, Delhi as shown in Annexure, in the industrial dispute between the management of JAC Air Services Pvt. Ltd. and their workman, which was received by the Central Government on 10.03.2017.

[No. L-11012/02/2011-IR (CM-1)]

M. K. SINGH, Section Officer

**ANNEXURE****BEFORE SH. HARBANSH KUMAR SAXENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO-II, KARKARDOOMA COURT COMPLEX, DELHI****ID. No. 1/12**

Sh. Sanjay Kumar,  
Vill & PO Achheja, Tehsil -Dadri,  
Distt: Gautam Budh Nagar,  
Ghaziabad(U.P.)

**Versus**

M/s. JAC Air Services Pvt. Ltd.,  
International Cargo Terminal,  
Public Amenities Building,  
Ground Floor, I.G.I Airport,  
New Delhi-110010.

**AWARD**

The Central Government in the Ministry of Labour Vide Letter No. L-11012/02/2011(IR(CM-I) dated 20.12.2011 referred the following Industrial Dispute to this Tribunal for adjudication :-

“Whether the action of the management of JAC Air Service Pvt .Ltd., in terminating the service of Sh. Sanjay Kumar is legal and justified? To what relief the workman concerned is entitled to ?

On 03.01.2012 reference was received in this Tribunal. Which was register as I.D No.65/2007 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

On 7.8.2013 workman Sh. Sanjay Kumar filed claim statement.

Through which he prayed for his re-instatement of his services with continuity of his previous service alongwith full back wages and other consequential reliefs.

Against aforesaid claim statement. Management filed its written statement on 18.12.2013.

Through which management prayed for dismissal of claim statement of workman.

Against written statement of management, workman filed its rejoinder on 10.02.2014. Through which workman reaffirmed the contents of claim statement.

On 21.03.2014 I framed following issues:-

1. Whether the action of the management of JAC Air Services Pvt. Ltd, in terminating the service of Sh. Sanjay Kumar is legal and justified? If so its effect?
2. To what relief the workman is entitled to?

I fixed 12.05.2014 for workman evidence. workman filed his affidavit in his evidence which was tendered by him on 19.06.2014.

He was cross-examined and his cross-examination concluded on 28.05.2015.

Workman closed his evidence. So I fixed 30.07.2015 for management evidence.

On 21.10.2015 management filed affidavit of Management witness.

On 11.02.2016 MW1 tendered his affidavit and his cross-examination was deferred to 5.04.2016.

On 5.04.2016 Mw1 was cross-examined and his cross-examination concluded. Management closed its evidence. Then I fixed 24.05.2016 for arguments.

On 22.09.2016 Ld. A/R for the workman orally argued but management sought adjournment. Hence I fixed 6.10.2016 for oral/ Written arguments of management.

On 6.10.2016 I heard the arguments of Ld.A/R for the management as well as Ld. A/R for the workman and reserved the Award with liberty to management to file written arguments.

Management filed written arguments which were introduced on record.

In the light of contentions and counter contentions I perused the pleadings of claim statement , written statement and rejoinder as well as evidence of WW1 and MW1 as well as principles laid down in the cited rulings on behalf of management .

My Issuewise findings as follows:-

**Finding on Issue No. 1.**

Perusal of contents of Issue No.1 shows that burden to prove Issue No. 1 lies on management.

To prove it Ld. A/R for the management cross-examined WW1 Sh. Sanjay Kumar, who admitted this fact that incident of theft took place on 3.08.2008 during flight check operation and memo in this respect was given to him. He also admitted that enquiry was held against him

In which I participated, workman also admitted his signatures on paper relating to enquiry. Which papers were marked as Exht. WW1/M1 and WW1/M2.

He also admitted this fact that after enquiry report disciplinary authority terminated him. Termination letter was sent to him. Which was received by him. No appeal has been filed by him against his termination . It is also admitted by workman that he filed no objection against conduction of enquiry by enquiry officer.

In addition to it, management examined MW1 to prove Issue No. 1. Who was cross-examined at length but nothing could be extracted out in his cross-examinations, Which may be favorable to workman and harmful to management.

So evidence of management on the point of burden of proof of Issue No. 1 is reliable and credible. Thus this required evidence is sufficient to prove issue No.1 in favour of management and against workman Sh. Sanjay Kumar. So Issue No. 1 is liable to be decided in favour of management and against workman Sh. Sanjay Kumar. Which is accordingly decided.

**Finding on Issue No. 2.**

Issue No. 2 is relating to relief to workman in case of his entitlement.

But finding on Issue no. 1 makes it crystal clear that Issue No. 1 has already been decided in favour of workman. So workman Sh. Sanjay Kumar is not entitled to any relief.

On the basis of aforesaid discussion I am of considered view that reference is liable to be decided against workman and in favour of management and claim statement is liable to be dismissed.

Which is accordingly decided.

Award is accordingly passed.

HARBANSH KUMAR SAXENA, Presiding Officer

Dated:-04/01/2017

नई दिल्ली, 10 मार्च, 2017

**का.आ. 747.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार आईजीआरयू के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 83/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 10.03.2017 को प्राप्त हुआ था।

[सं. एल-11012/04/2011-आईआर (सीएम-1)]

एम. के सिंह, अनुभाग अधिकारी

New Delhi, the 10th March, 2017

**S.O. 747.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 83/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow as shown in Annexure, in the industrial dispute between the management of M/s. IGRUA and their workman, which was received by the Central Government on 10.03.2017.

[No. L-11012/04/2011-IR (CM-1)]

M. K. SINGH, Section Officer



**ANNEXURE****CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM LABOUR -COURT, LUCKNOW****PRESENT :** RAKESH KUMAR, Presiding Officer**I.D. No. 83/2012**

Ref.No. L-11012/04/2011-IR(CM-I) dated 16.10.2012

**BETWEEN :**

Sri Suresh Chandra Yadav, Asstt .Gr. A  
 Indira Gandhi Rashtriya Udaan Academy,  
 Fursatganj, Raibareli

**AND**

1. The Director,  
 Indira Gandhi Rashtriya Udaan Academy,  
 Fursatganj, Raibareli

**AWARD**

1. By order No. L-11012/04/2011-IR(CM-I) dated 16.10.2012 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sri Suresh Chandra Yadav, Asstt. Gr.A Raibareli and the Director, Indira Gandhi Rashtriya Udaan Academy, Raibareli for adjudication.

2. The reference under adjudication is:

**“WHETHER THE ACTION OF THE MANAGEMENT OF INDIRA GANDHI RASHTRIYA UDAAN ACADEMY IN NOT PROMOTING SRI SURESH CHAND YADAV, ASSTT. GRADE A FROM THE YEAR 1996 AND FURTHER ACCORDING TO PROMOTION POLICY NOT PROMOTING HIM IN THE ASSTT. CATEGORY IS LEGAL AND JUSTIFIED? TO WHAT RELIEF IS THE WORKMAN CONCERNED ENTITLED ?”**

3. The workman in his claim statement, W-2 has stated in brief that he was appointed as Cleaner/Helper on 01.10.1990 in the office of opposite party no.2, and on oral directions he has been working as Asstt., since August 1992, several other employees have been working on higher post in the office/academy, some of them were junior to the workman. The workman has asserted that some other employees have been sanctioned scale according to the post on which they have been working in the year 1994-95 but due designation and salary was not provided to the petitioner, and he had been unduly superseded although other junior employees were less qualified. The management of opposite party no.2 did not consider the representation given by the workman, consequently he filed the writ petition before Hon'ble High Court, Lucknow in the year 1998 wherein prayer “A” was disallowed and prayer “B” was disposed with certain directions. Later on the management issued letter dated 16.12.1996, in pursuance of that letter he ought to have been promoted on the post of Asstt. Grade A in the year 1996.

4. It has been alleged in the claim statement that directions given by Civil Aviation Ministry in its letter dated 06.01.2000 have not been complied with by the management, neither directions of the Hon'ble High Court was followed, several other employees working in the office have been unduly promoted/posted without following appropriate procedure. Correspondence between the opposite party and the Ministry have been referred in the claim statement.

5. The petitioner has asserted that more than a dozen employees have been given promotional and other benefits but he has been deprived. With the aforesaid pleadings the workman has prayed for his promotional order on the post of Asstt. Grade A, Gr.B and Gr.C as per the facts mentioned in claim statement, since Oct.1996. Pecuniary damages have also been claimed. Several annexures have been enclosed with the claim statement.

6. The management has filed written statement M-6 wherein main allegations of the claim statement have been vehemently denied. The management has submitted that Hon'ble Apex Court has given directions in several other matters that the court can not order the management for promotion of any person on the particular post. The opposite party has further stated that promotion of the staff of the academy are made as per specific rules, and Regulations and Guidelines issued by the Central Government. Hon'ble High Court's order dated 13.07.2006 has been admitted in the written statement and the management has emphasized that the promotions have been made in accordance with norms and guidelines. Due to pendency of case before Hon'ble High Court in writ petition no. 952/98 no decision could be taken, moreover the academy has stopped any appointment/promotion till further

orders in compliance of order /letter dated 06.01.2000 issued by Ministry of Civil Aviation, New Delhi. The opposite party has further asserted that appointment and promotion in the academy are strictly in accordance with rules and regulations and guidelines, and also in accordance with Article 14 & 16 of the Constitution of India. The management has submitted that the workman is not entitled to any relief.

7. With strong denial of the facts mentioned in the written statement the workman has filed rejoinder W-7 reiterating the pleas taken in the claim statement. The workman has also raised objection that the written statement has not been signed by the competent authority. Certain documents have been filed by the workman alongwith rejoinder W-7.

8. During the proceedings before this court, W-8W-11 and W-13 were moved by the workman raising certain technical objections in the written statement. The applications were disposed off by this court on 24.2.15. Later on several dates were fixed for filing documents by the parties in support of their respective claim but none appeared on behalf of the workman although more than 10 dates were fixed and notice through registered post was also issued to the workman. The case was ultimately fixed for hearing of arguments. It appeared that the workman does not want to further pursue the case, his grievance might have been resolved.

9. Arguments of Learned AR for the opposite party Sri SK Shukla have been heard at length. Record has been perused.

10. In support of the claim statement the workman has not adduced his affidavit or any other cogent evidence. He has not appeared in the court so that his statement on oath could be recorded.

11. Learned AR for the opposite party Sri S.K.Shukla has relied upon the following rulings;

1. 2008(118) FLR, M/s Uptron Powertronics Employees Union Vs PO, Labour Court page 1164 Hon'ble Allahabad High Court.
2. 1979(39) FLR Shankar Chakravarty Vs Britannia Biscuit Co. Page 70 Hon'ble Supreme Court
3. 1984(49) FLR Air Tech Pvt. Lts. Vs State of UP and others Page 38 Hon'ble Allahabad High Court.

12. Since the workman has not adduced any evidence in support of his claim statement neither any other witness has been produced by him in the court, there is no reason to disbelieve the version given by the management in its written statement, in such circumstances no relief can be given to the workman. The workman is not entitled to any relief.

13. Award as above.

RAKESH KUMAR, Presiding Officer

LUCKNOW

15.12.2016

नई दिल्ली, 14 मार्च, 2017

**का.आ. 748.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एफसीआई के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमद नगर के पंचाट (संदर्भ संख्या 30/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.03.2017 को प्राप्त हुआ था।

[सं. एल-22013/1/2017-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 14th March, 2017

**S.O. 748.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 30/2010) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmed Nagar as shown in Annexure, in the industrial dispute between the management of M/s. FCI and their workman, which was received by the Central Government on 14.03.2017.

[No. L-22013/1/2017-IR (CM-II)]

RAJENDER SINGH, Section Officer

**ANNEXURE**

Ref (IDA) No. 30/2010

Award (Exh. O-33)

Filed on : 02.06.2010  
 Registered on : 02.06.2010  
 Decided on : 03.12.2016  
 Duration : 06 YY, 06 MM, 01 DD.

**BEFORE S. N. SALVE, PRESIDING OFFICER, FIRST LABOUR COURT, AHMEDNAGAR**

Ref (IDA) No. 30/2010

Exh. O-33

1. Divisional Manager,  
Food Corporation of India,  
Mistry Bhavan, Dinsha Vachha Road,  
Mumbai.
2. Mathadi Kamgar Mazoor Sah. Sanstha  
Maryadit, Kedgaon,  
Po. Kedgaon,  
Dist. Ahmednagar.

...First Party

V/s

Balasaheb Ambadas Gund,  
 Age : Major, Occu. Nil,  
 R/o Satpute Galli, Kedgaon,  
 Po. Kedgaon,  
 Dist. Ahmednagar.

...Second Party

**CORAM : SHRI S. N. SALVE, JUDGE, LABOUR COURT.****APPEARANCE** :- Sau. M. S. Kathvate Adv. for first party No. 1.Shri S. R. Kakde Adv. for first party No. 2.Shri K. Y. Modgekar Tak Adv. for second party.**AWARD**( Passed on 3<sup>rd</sup> December, 2016 )

This is a reference under section 10(1)c of the Industrial Disputes Act, 1947 (Hereinafter referred to as "the ID Act" for the sake of brevity) referred by the Central Government, Ministry of Labour and Employment New Delhi for adjudication of the issue as per Schedule annexed therewith – "Whether the action of the management of Food Corporation of India, Kedgaon, Dist. Ahmednagar by not regularizing the services of Shri Balasaheb Ambadas Gund even though he was working with M/s Mathadi Kamgar Mazdoor Sahakari Sanstha Maryadit at the time of converting the contract workers into Departmental Payment System (DPS) is justified ? If not, to what relief the workman Shri Balasaheb Ambadas Gund is entitled to ?"

2. After receipt of reference, notice was issued to the second party. In response to the notice, he appeared and filed Statement of Claim (Exh. U-3) stating therein that the first party No. 1 is a corporation having its establishment at Ahmednagar and works under the control of Central Government having its regional office in Mumbai. The first party No. 1 deals with purchase and storage of food grain from local market and its distribution. It has engaged several workers to carry out its activities. The second party was a 'workman' of first party No. 1. He was working from the year 1990 with the first party No. 1 at Kedgaon, Ahmednagar. He was made member of Provident Funds scheme as per rules. He was getting wages @ Rs. 14/- per day. His services were clean and without any blemishes. However, his services were orally terminated by the first party No. 1 w. e. f. 1.9.1997. The first party No. 1 had continued the services of Shri Somnath Nalawade, Gorakh Shinde, Bhimrao Gade, Balu Jagtap, Kushaba Sul, Raju Thombare, who were junior to the second party. It is submitted that the second party had completed 240 days continuous service during last 12 months before his termination on 1.9.1997, and therefore, he was entitled for prior notice, notice pay in lieu of the same and compensation, as per provisions of law. According to the second party, oral termination is illegal and liable to be set aside. He is entitled to be reinstated in service, with continuity and back wages. He, therefore, prayed to declare the termination being illegal and reinstatement him with continuity and full back wages.

3. On receipt of notice, the first party No. 1 appeared and resisted the statement of claim by filing written statement (Exh. C-4). The first party No. 1 has denied all adverse allegations and submitted that the Reference in respect of the dispute raised by the second party is not maintainable in law, because, there was no master and servant relationship between the first and second party. It is submitted that the second party was employed by first party No. 2 Mathadi Kamgar Mazdoor Sanstha Ltd. Kedgaon, Ahmednagar on contract basis, as per work load, on day today basis. It is further submitted that this important aspect has been deliberately suppressed by the second party.

As per F. C. I. New Delhi letter dtd. 14.6.1996 certain conditions were stipulated for eligibility of workers under "Direct Payment System". There was a committee to find out eligible workers. The second party had lodged a complaint for his absorption / reinstatement, with first party No. 2 Mathadi Kamgar Mazdoor Sanstha Ltd. Kedgaon and society appears to have assured second party regarding his absorption in near future as per contract system. However, the first party is not under any obligations to consider the claim raised by the second party in the present reference. Hence, the reference is liable to be answered in the negative.

4. The first party No. 2 has resisted the statement of claim by filing written statement (Exh. C-11). According to the first party No. 2, the reference as raised is not maintainable in the eyes of law and this Court has no jurisdiction to adjudicate the present reference as the first party No. 2 is not an industry within the meaning of the Act. The second party has not chosen the proper forum. It is denied by the first party No. 2 that the second party was its workman. Since the first party No. 2 is a society registered under the Maharashtra Co-operative Societies Act, 1960, in view of Sec. 91 of the said Act only Co-operative Court is having jurisdiction to adjudicate the matter pertaining to the Co-operative Society. It is submitted by the first party No. 2 that there is no specific pleading in statement of claim with respect to the first party No. 2. The second party has no cause of action to raise the present dispute against the first party No. 2. It is denied that the services of the second party came to be terminated by oral order dtd. 1.9.1997 and his last drawn wages were Rs. 14/-. It is denied that the services of the second party are clean and unblemished and has rendered continuous services. It is denied that the second party was the member of the Provident Fund. It is denied that the junior employees namely Somnath Nalawade, Gorakh Shinde, Bhimrao Gade, Balu Jagtap, Kushaba Sul, Raju Thombare have been retained in service and services of the second party came to be terminated by oral order dtd. 1.9.1997. It is submitted by the first party No. 2 that it is a Co-operative Society and was formed for providing labours on contract basis to first party No. 1. The first party No. 2 has taken the contract of loading and unloading food grains of first party No. 1. There was no relationship of employer and employee between the second party and first party No. 2. On 26.3.1991 the contract system with first party No. 1 was abolished at Ahmednagar Depot. As the contract between the first party No. 1 and 2 was valid till 3.4.1994, it continued the work of loading and unloading food grains. After the expiry of the contract, the first party No. 2 has not taken any contract. It is submitted by the first party No. 2 that the labours went on strike therefore, as per the orders of the Collector, Ahmednagar in the year 1994, 1995 and 1996 the workers have worked and payment for the aforesaid period have also been paid as per the order of Collector, Ahmednagar. However, the first party No. 2 was not concerned with it. Since, 1.5.1996 the first party No. 1 has absorbed the employees under direct payment system. After that resolution was passed for dissolution of the first party No. 2 society. It is submitted by the first party No. 1 that after dissolution of first party No. 2 society, Administrator has been appointed. The second party has never worked with the first party No. 2. The first party No. 2, therefore, prayed to answer the reference in the negative.

5. The present reference was adjudicated by my Predecessor on 6.10.2012 directing the first party No. 1 to reinstate the second party with continuity of service with consequential benefits. The first party No. 1 being aggrieved filed Writ Petition No. 5342/2015 before the Hon'ble High Court of Judicature at Bombay, Bench at Aurangabad. The Hon'ble High Court was pleased to remand the reference to this Court with direction to decide as per the provisions of Law.

6. The issues framed at Exh. O-26 are reproduced below along with my findings with reasons thereon are as follows :

Sr. No.	<u>ISSUES</u>	<u>FINDINGS</u>
1.	Whether the action of the management of Food Corporation of India, Kedgaon, Dist. Ahmednagar by not regularizing the services of Shri Balasaheb Ambadas Gund even though he was working with M/s Mathadi Kamgar Mazdoor Sahakari Sanstha Maryadit at the time of converting the contract workers into Departmental Payment System (DPS) is justified ?	Yes
2.	If not, to what relief the workman Shri Balasaheb Ambadas Gund is entitled to ?	He is entitled to the compensation of Rs. 75,000/- from the first party No. 2.

**REASONS**

7. The second party in support of the statement of claim has examined himself by filing an affidavit of examination-in-chief (Exh. U-30) and ex-employees of first party No. 1 Shri Shivaji Patil and Ramdas Athre respectively at Exh. O-28 and O-31. As against this, the first party No. 1 has examined its Manager Shri Pramod Dolas by filing an affidavit of examination-in-chief (Exh. C-16). The first party No. 2 has also examined its Ex-Chairman Shri Gajanan Londhe by filing an affidavit of examination-in-chief (Exh.C-22).

**Issue Nos. 1 :**

8. The second party deposed in his affidavit of examination-in-chief (Exh. U-30) that he joined the services with the first party since 1990. His services were terminated w. e. f. 1.9.1997. The process of absorption of the workers with the first party No. 1 was started on and from 26.3.1991. However, he was not absorbed with the first party No. 1. He further deposed that before 26.3.1991 he was being paid his wages by the first party No. 2 on pay sheet and thereafter, from 1.9.1997 his wages were being paid by the first party No. 1. However, he was not absorbed with the first party. He deposed that the first party No. 1 has terminated his services illegally. He further deposed that his junior workers namely Somnath Nalavade, Gorakh Shinde, Bhimrao Gade, Balu Jagtap, Kushaba Sul, Raju Thombare and Digambar Wayse have been retained in service and he has been terminated. In cross-examination by the first party No. 1, he deposed that he has no documentary evidence showing that the first party No. 1 has paid his wages. He stated that the office bearers of the first party No. 2 society has terminated his services by oral order. He admitted that he was working through the first party No. 2 as contract employee. He denied that as per the Circular issued, he has not rendered continuous three years service, therefore, he was not entitled for absorption. In cross-examination by the first party No. 2, he denied that he was employed by the officers of first party No. 1. He admitted that the first party No. 2 society was paying his wages. He admitted that the first party No. 2 society has never deposited his wages in A. D. C. C. Bank at Kedgaon. He stated that he has not placed on record any documentary evidence showing that society was paying his wages. He stated that he has not placed on record receipt of Provident Fund to show that he was employed with first party No. 2.

9. Shivaji Patil (UW-2) deposed that he was working with first party No. 1 through the first party No. 2. His services were regularized with the first party No. 1 in the year 1996. He deposed that the second party joined the services with the first party No. 2 in the year 1990. He deposed that the second party worked with the first party No. 1 up to 1997. He further deposed that the services of second party were terminated in the year 1997. He deposed that the second party used to come at the gate for demanding work. He deposed that the first party No. 1 has assigned work to the second party during the period 1990 to 1997. In cross-examination, he stated that he is not aware that the officers of first party No.1 and office-bearers of first party No. 2 have taken the Identification Parade. He further deposed that second party was also present with him for Identification Parade. In cross-examination by the first party No. 2, he stated that he has not produced on record any documentary evidence to show that the second party was working with first party No. 1 through the first party No. 2. He has also stated that he has not produced on record any documentary evidence to show the first party No. 2 used to pay wages to second party.

10. The evidence of Ramdas Athre (UW-2) is broadly on the same lines as deposed by Shivaji Patil (UW-2). No purpose would be served by repeating what has been stated in preceding para.

11. Pramod Dolar (CW-1) deposed that the second party was never employed with first party No.1. He deposed that direct payment system in first party owned depots was started as per Notification of Labour Ministry Government of India for prohibition of employment of contract labour and as per FCI New Delhi Letter dated 14/06/1996 only the workers already working with the Society for last 3 years and who has worked for at least 9 months out of 12 months in the last year preceding April 1996 are eligible to apply as worker under direct payment system and Identification of workers may be made by a Committee from records of Labour Co-operative Society and First party No. 1. He further deposed that the second party was never employed by the first party No. 1 therefore, question of termination does not arise. In cross-examination by first party No. 2, he admitted that no document is placed on record to show that the second party was employed with the first party No. 2. He admitted that the period of licence issued to first party No. 2 was expired on 3.4.1994. In cross-examination by second party he admitted that wages of all the workers were being paid by the first party No. 1. He admitted that the Committee has taken decision regarding absorption on the basis of information supplied by first party No. 2. He admitted that the second party was in employment with the first party No. 2 since 1981. He admitted that as per the norms whether the second party was in employment prior to 14.06.1996 can only be ascertained from the muster roll and pay sheets. He denied that the second party has fulfilled all the criteria for absorption.

12. Gajanan Londhe (CW-2) ex-chairman of first party No. 2 deposed that the first party No. 2 society was registered under the Maharashtra Co-operative Societies Act and had taken the contract of first party No. 1 for loading and unloading food grains. The second party has never worked with the first party No. 2. He further deposed that the contract was expired on 3.4.1994. He deposed that the first party No. 1 has absorbed all the workers working through first party No. 2. He further deposed that the first party No. 2 society was abolished 25.07.1998 by passing resolution and order to that effect was issued on 16.01.1999. In cross-examination by second party, he admitted that documents

like muster roll and pay sheets are in the custody of co-operative department. When he was confronted the Voters list, he admitted that the name of the second party is at Sr. No. 157.

13. I have heard the submission canvassed by the learned counsel for the parties. The Ld. Counsel for the second party argued that the second party was in employment with the first party No. 1 and this fact has also been established by the witnesses examined on behalf of his. He further argued that the voters list also produced on record also goes to prove that the second party was in employment with the first party No. 2. He has also referred the list of worker filed along with List of Documents (Exh. C-8) wherein the name of the second party is at Sr. No. 157. He further submitted that though the second party has fulfilled all the criteria, he has not been regularized and the said action of the first party No. 1 is not justified. He further submitted that all the relevant documents with respect to muster roll and pay sheets of the second party are in the custody of the first party No. 1 which they have not produced on record, therefore, adverse inference needs to be drawn. Lastly, he prayed to answer the reference in the affirmative. In support of his submissions, he has relied upon the following decisions:

- i) **Sanjay Kumar S/o Surendra Kumar Sharma V/s Chief Executive Officer, Janpad Panchayat, Ratlam, (2010 LLR 1065),**
- ii) **Bright Export Limited V/s Central Board of Trustees, EPF Organisation, (2016 LLR 487),**
- iii) **Nicholas Piramal India Ltd. V/s Harisingh, (2015 II CLR 468).**

14. As against this, the Learned Counsel for the first party No. 1 argued that the second party was not in employment with the first party No. 1. He further submitted that the office-bearers of the first party No. 2 has terminated his services and first party No. 2 used to pay wages to him. He further argued that to corroborate the case, the second party has examined two witnesses, but no documentary evidence to show that the second party was in employment with the first party No. 1. He further submitted that the contract employee can not be the direct employee of the principal employee. In support of his submission, he has relied upon the decision in the case of **Steel Authority of India Ltd. & Ors. V/s National Union Water Front Workers & Ors., (Appeal (Civil) 6009-6010/2001)**. Lastly, he prayed to answer the reference in the negative.

15. The Learned Counsel for the first party No. 2 argued that the second party was not in its employment and no document is placed on record to that effect. He further submitted that the first party No. 1 is a society registered under the co-operative societies act, therefore, this court has no jurisdiction to divide the present reference raised by the second party. In support of his submissions, he has relied upon following decisions;

- i) **Pipraich Sugar Mills Ltd V/s Pipraich Sugar Mills Mazdoor Union, (23<sup>rd</sup> October, 1956 S. C.),**
- ii) **Workmen represented by the Secretary namely Shekhar Sharma V/s Employer in relation to the management of Bhaga Bandh Colliery of M/s B. C. C. L. and Ors., (2009 (122) FLR 633),**
- iii) **Jila Sahakari Kendriya Bank Ltd. Harsinghpur V/s Govind Prasad Nai and Ors., (1998 (80) FLR 184).**

Lastly, he prayed to answer the reference in the negative.

16. Initially, the present reference was raised by the second party against the first party No. 1 FCI. When the first party No. 1 denied the relationship employer and employee, the second party arrayed the Mathadi Kamgar Mazoor Sahakari Sanstha as first party No. 2. The first party No. 2 has also in its written statement denied the relationship of employer and employee.

17. The second party claims to be an employee of first party No. 2. Though the first party No. 2 has denied in toto that the second party is not its employee, no documentary evidence is placed on record to that effect. The second party has placed on record Voters List wherein the name of the second party is reflected as member of the society. The first party No. 1 has also produced on record the list of workers below list of documents (Exh. C-8) wherein the name of the second party is reflected as worker. Shivaji Patil (UW-2) and Ramdas Athre (UW-2) have also stated in their evidence that the second party was in employment with the first party No. 2 for the period from 1990 to 1997. Their evidence is nowhere shattered in cross-examination. The evidence of Shivaji Patil (UW-2) and Ramdas Athre (UW-2) coupled with the above documentary evidence go to prove that the second party was in employment with the first party No. 2. Pramod Dolas (CW-1) has also admitted in his cross-examination, the second party was in employment with the first party No. 2 since 1981. The best evidence like muster roll and pay sheets of the second party was in the custody of the first party No. 2. The first party No. 2 has not produced on the same. The first party No. 2 has withheld the said evidence. In this regard, the ratio laid down in **Sanjay Kumar S/o Surendra Kumar Sharma V/s Chief Executive Officer, Janpad Panchayat, Ratlam, (Supra)** and **Bright Export Limited V/s Central Board of Trustees, EPF Organisation, (Supra)** is applicable to the present set of facts. In view of the evidence referred herein above, for non production of the best available evidence and the law laid down in aforesaid decisions, adverse inference is required to be drawn that the second party was in employment with the first party No. 2 for the period from 1990 to 1997.

18. So far as absorption under Direct Payment System is concerned, Circular dated 14.6.1996 is relevant. As per the said Circular, "the workers already working there for the last three years and who had worked for at least 9 out of 12 months in the last year preceding April, 1996 and whose EPF deduction were being made, will be extended the benefit of Direct Payment System. The bio-data forms may be provided to the concerned labour Union which would be completely filled in and signed by the individual worker and will be furnished by the Union to the Depot Incharge duly verifying and certifying the identity and signature of the worker. The bio data form should be supplied only in respect of the labourers who are presently working and who had worked for at least 9 months out of 12 months in the last year preceding April, 1996 and whose EPF deductions were being made and no substitution or induction of fresh labour should be made. The workers were also asked to supply following documents in support of their date of birth/age given by him in his bio-data form. Identification is also required to be made. Each worker was subjected to a medical examination".

19. In so far as the second party is concerned, though he was in employment with the first party No. 2, but he has not duly proved that his EPF deduction was being made. So also there is no evidence led by the second party that the bio data forms provided to the Labour Union have been completely filled in and signed in by him which was furnished by the union to the Depot Incharge. There is also no evidence led by the second party that the documents in support of his date of birth, age given by him in bio data form was submitted. As per the aforesaid Notification identification was also required to be made. It is not the case of the second party that his identification was made and was subjected to a medical examination. Unless the aforesaid formalities are complied with question of absorption doesn't arise. In absence of evidence as to compliance of requirements of aforesaid circular, it can not be concluded that the action of the first party No. 1 by not regularizing the services of the second party is not justified.

20. So far as the direct absorption under Direct Payment System with first party No. 1 as claimed by the second party is concerned, the learned counsel for the first party No. 1 has referred the decision in the case of **Steel Authority of India Ltd. And Ors. V/s National Union Water Front Workers and Ors., (Civil Appeal No. 6009-6010 of 2001 decided on 30.8.2001)** wherein the Hon'ble Apex Court has observed that :

"The provisions of the CLRA Act do not make the contractor an agent for creating relationship of master and servant between the principal employer and the contract labour in the situations pointed out above. In all such cases absorbing the contract labour would amount to opening a new channel of recruitment and it could not have been the intention of the Parliament in enacting CLRA Act to provide for appointment to the posts in various government / non-government establishments by circumventing the service rules."

It is further observed by the Hon'ble Apex Court that :

"If the Court were to accept the contention of the contract labour that automatic absorption should follow a notification prohibiting employment of contract labour, the Court would be adding a sub-section to Section 10 prescribing for automatic absorption on issuance of notification under Sub Section (1) of Section 10 which would be impermissible."

21. Admittedly, the second party was the contract employee. He was working with the first party No. 1 through the first party No. 2. As per the notification referred hereinabove contract system at F. C. I. Owned Depots was abolished and the workers working with the societies at the time of converting the contract workers into Departmental Payment System was started subject to terms and conditions of the notification. As stated hereinabove the second party has not complied with the conditions enumerated in the notification dtd. 14.6.1996. Under these circumstances the action first party No. 1 by not regularizing the services of second party though he was working with first party No. 2 at the time of converting the contract workers into Direct Payment System is justified. I, therefore, answer issue No. 1 in the negative.

### **Issue No. 2 :**

22. In view of my findings as to issue No. 1, I have already held that the second party was in employment with the first party No. 2. According to the second party, the office bearers of the first party No. 2 has terminated the services. It is the case of the second party that without following the mandatory provisions of the Act his services have been terminated. It is not the case of the first party No. 2 that while terminating the services of the second party mandatory provisions of Sec. 25-F have been complied with.

23. The learned counsel for the first party No. 2 argued that the present reference raised by the second party is not maintainable against the first party No. 2 as the present dispute is between the worker and the first party No. 2 society which is registered under the Maharashtra Co-operative Societies Act and this Court has no jurisdiction in the matter. In support of his submissions, he has relied upon the decision in the case of **Jila Sahakari Kendriya Bank Ltd. Harsingpur V/s Govind Prasa Nai and Ors., (1998(90) FLR 185)** wherein it is held that since in service dispute of Co-operative Society Labour Court has no jurisdiction in view of the provision of Sec. 55 of M. P. Co-operative

Societies Act. It is pertinent to point out here that in the decision relied upon by the learned counsel for the first party No. 2 in M. P. Co-operative Societies Act, 1972 there is specific provision to that effect. In so far as the present case at hand is concerned, the present dispute raised by the second party is not purely a co-operative dispute. The second party was also seeking the relief against the first party No. 1 which is not a Co-operative Society. Therefore, it can not be concluded that the present dispute is purely co-operative dispute which bars the jurisdiction of this Court. In this view of the matter the decision relied upon by the learned counsel of the first party No. 2 in **Jila Sahakari Kendriya Bank Ltd. Harsingpur V/s Govind Prasa Nai and Ors., (Supra)** would not come to the help of the first party No. 2. The learned counsel for the first party No. 2 has also referred the decision in the case of workman represented by the **Secretary, Namely Shekhar Sharma V/s Employer in relation to the management of Bhagapandh colliery of M/s B. C. C. L. and Ors., (2009 (122) FLR 633)**, wherein it is held that original reference subsequently modified for adjudication as to whether action of the management not giving employment through contractors workman was justified or not. Substitution by second reference in the name of amendment not permissible in Law. Admittedly, the original reference issued by the Central Govt. has been modified and corrigendum to that effect has been issued. However, the first party No. 2 has not challenged the said before the appropriate forum. At this stage it can not be concluded that the amendment in reference is not permissible. Moreover, this Court is only supposed to adjudicate the reference referred by the appropriate Govt.

24. It is evident from the record that the second party has worked for about 7 years from 1990 till 1.9.1997 and was out of employment for about 18 years. The first party No. 2 society is also dissolved. Under these circumstances relief of reinstatement with first party No. 2 is not feasible. The second party has also raised the dispute at a very belated stage. Considering the length of service of the second party with the first party No. 2 and the fact that the second party has raised the dispute at belated stage awarding compensation in lieu of reinstatement and continuity of service would be justified.

Hence, following award;

#### AWARD

- i) The reference is answered partly in the affirmative.
- ii) It is hereby declared that the action of first party No. 1 by not regularizing the services of second party even though he was working with first party No. 2 at the time of converting the contract workers into Direct Payment System is justified.
- iii) The first party No. 2 do pay compensation of Rs. 75,000/- in lieu of reinstatement and back wages.
- iv) Four copies of Award be sent to Central Government, Ministry of Labour and Employment New Delhi.

S.N. SALVE, Presiding Officer

Date : 03.12.2016